
GLASS LEWIS

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A MARKET-BY-MARKET PREVIEW OF THE
2010 PROXY SEASON AROUND THE WORLD

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Austria

Regulatory Developments

Austrian corporate governance practices are primarily regulated by the Austrian Corporate Governance Kodex (“Kodex”) and the legally-binding Austrian Stock Corporations Act (AktG or “Corporations Act”). The Kodex contains non-binding suggestions for best practices in corporate governance, “comply or explain” provisions (hereinafter referred to as “recommendations”) and legal requirements. The Kodex, first published in 2002, was most recently amended in January 2009 and currently has several noteworthy revisions under consideration that will be finalized in January 2010.

The revisions fall into two categories:

- (i) amendments to reflect Austria’s recent implementation of the European Shareholders Rights Directive (“Directive”) through revisions to the Austrian law; and
- (ii) amendments to management compensation requirements to reflect the EU recommendations on compensation issued in April 2009. We expect that the amendments to Austrian law stemming from the Directive will have a substantial effect on shareholders during the 2010 proxy season.

Market Issues

Austrian companies’ corporate governance practices, especially with regard to disclosure and voting impediments, have historically lagged behind other developed European markets. While several leading Austrian companies have set standards exceeding the disclosure requirements set by Austrian regulators, in general, international and institutional shareholders have generally been disenfranchised as a result of poor information and voting restrictions. Nevertheless, Austria has made significant progress in the past three years to meet or even exceed some of its neighbors’ governance practices. During the 2010 proxy season, we expect that international shareholders, no longer impeded by shareblocking and with better access to more information in a timelier manner, will begin to take a more active role in Austrian companies’ governance by exercising voting rights.

Election of Supervisory Board Members

In accordance with a recent change to the Corporations Act, supervisory board members must be elected on an individual basis. However, companies may propose slate elections if no shareholders object. While the notice of meeting generally specifies the method of election, it can sometimes be unclear. Moreover, some sub-custodians only allow slate votes, despite the fact that elections may be held individually at meetings. As such, Glass Lewis often provides recommendations for both options.

With the implementation of the Directive in 2009, we expect to significantly expand our analysis of Austrian supervisory boards. Historically, most companies have not provided the identities of the nominees far enough in advance of the general meeting for international shareholders who vote by proxy to submit their votes. During the 2010 proxy season, however, the identity of all nominees, along with any other relevant background information on the nominees that is intended to be presented at the meeting, must be made available on the company website at least 21 days prior to the meeting. Nevertheless, in some cases, the disclosure of complete information regarding the background of nominees may be postponed until five business days prior to the meeting. As such, shareholders may still find it difficult, in some cases, to make fully informed voting decisions when voting by proxy.

Compensation Issues

While Austrian companies did not make international headlines in the near-global outcry over excessive management compensation in 2009, unlike many of their European peers, reigning in poor compensation practices has become a priority for Austrian shareholders and regulatory authorities. Among the

compensation-related amendments to the Kodex currently being debated are the following

(i) a cap on variable compensation as a percentage of total compensation; (ii) a minimum performance period of two years for variable compensation; (iii) a cap on severance payments equal to two years' total compensation; (iv) a minimum four-year vesting period for stock options; and (v) better disclosure of performance targets and actual performance in relation to targets.

Notable Issues

As noted above, the implementation of the Directive will have a substantial impact on shareholders during the 2010 proxy season. Proxy materials, with all relevant explanatory documents, will now be available on company websites at least 21 days prior to the meeting, whereas these materials were previously made available only 7 days prior to the meeting. In addition, Austrian companies have switched from a shareblocking system to a record date system, opening the doors for many international shareholders to vote in Austria.

New Proxy Paper Features

Our 2010 Austrian Proxy Papers will include enhanced analysis of supervisory board elections, capital issues, and other proposals for which we have historically lacked relevant information.

Belgium

Regulatory Developments

Belgian corporate governance is centered primarily upon the Belgian Company Code (1999), the Law of 2 August 2002, and the Belgian Corporate Governance Code ("BCGC"), a "comply or explain" set of recommendations created by the Belgian Corporate Governance Committee. The BCGC was first released in 2004 and more recently updated in 2009. The revised recommendations apply to fiscal years started on or after January 1, 2009, with the exception of certain provisions pertaining to executive remuneration, which are intended for employment agreements entered into after July 1, 2009.

Market Issues

Oftentimes, Belgian companies seek shareholder approval to grant rights to third parties contingent upon a change in control. In addition, management may be authorized to repurchase shares in the event of serious and imminent harm to the company. We believe that authorities intended to prevent or thwart a potential takeover are not conducive to good corporate governance and can reduce management accountability. As such, we will continue to recommend that shareholders oppose them.

Election of Board Members

In accordance with the Belgian Company Code, public companies are governed by a unitary board consisting of non-executive and executive directors, although some state-controlled entities may have a different board structure. The chairman may also serve as CEO, although the BCGC recommends a justification should this be a company's choice. The board must have at least three members and may include employee representatives elected by the company.

In accordance with the BCGC, we will generally recommend that at least half of the board consist of non-executive directors and that a minimum of three directors be independent. Furthermore, we expect that audit and remuneration committees be comprised of a majority of independent directors.

Compensation Issues

Pursuant to Belgian law, shareholders approve directors' fees on an aggregate basis, as well as equity-based compensation plans. Furthermore, in accordance with the revised edition of the BCGC, each listed company

should disclose a remuneration policy for non-executive directors and management. The policy should focus on the principles upon which executive remuneration is based and the various components of the remuneration package.

Notable Issues

The upcoming proxy season will give investors the opportunity to evaluate how Belgian companies will comply with the new recommendations of the corporate governance code. The revised provisions on executive remuneration, the separation of the roles of chairman of the board of directors and chief executive officer, as well as the board's monitoring role are expected to raise increased scrutiny of Belgian companies governance practices.

Brazil

Regulatory Developments

Two major regulatory reforms will seriously impact corporate governance in Brazil beginning in 2010. First, the Comissão de Valores Mobiliários (CVM) will enact the "new 202", which will significantly increase the quantity and quality of information that is disclosed to investors on a periodic basis. Information regarding executive remuneration, related-party transactions, insider trading, directors' experience, share ownership, general meetings, and auditor independence will now be available for review.

In addition to this monumental reform, the CVM will enact Brazil's first set of rules concerning proxy solicitation. The new rules will allow investors with 0.5% of the share capital full proxy-access, will sanction the use of proxy statements that will include supporting information for each of the proposals on the agenda, will economically incentivize companies to adopt electronic mechanisms for proxy voting thus removing the power-of-attorney impediment, and will provide for a 30-day notice period for all annual general meetings. These reforms mark a major milestone in the development of the Brazilian capital market.

Further, the Novo Mercado steering committee is currently revising the regulations that govern this listing segment of the BM&FBOVESPA. Some of the goals of the committee are to implement a mandatory takeover bid provision with a 30% ownership threshold, similar to that in place in the European community, as well as to increase the minimum percentage of independent directors that must comprise the board from 20% to 30%.

Market Issues

With few exceptions, Brazilian companies are predominately controlled by families, through shareholder agreements, and/or through pyramidal corporate structures. Further, Brazilian legislation allows for two classes of stock, voting and non-voting. The capital structure may be comprised of a maximum of two-thirds non-voting shares. This effectively allows an issuer's controlling shareholder to exercise control over a company with as little as 16.7% of the economic ownership.

Election of Directors

The new rules regarding proxy solicitation will require that companies disclose the name and biographies of the candidates that comprise the board's proposed slate. Further, shareholder nominees will be included in the proxy statement. This greatly differs from the past practice of not disclosing the names of the board's candidates and shareholders not having any medium for presenting their nominees, except for the meeting itself. Due to these changes, Glass Lewis will now be able to evaluate the board of directors and provide recommendations on both the board's slate, as well as shareholder nominees.

Compensation Issues

The new 202 will require that companies disclose their compensation policy for executive directors to

investors on an annual basis. Further, the information from the 202 must now be included in companies' proxy statements in accordance with the new rules on proxy solicitation. Given that Brazilian corporate law requires that shareholders approve the compensation of executive directors at the annual general meeting, and given the increase in transparency regarding this issue provided for by the new 202, Brazilian companies will in effect now submit say-on-pay proposals to their shareholders. Glass Lewis will evaluate these proposals in the same manner that we evaluate say-on-pay in other markets, while taking Brazilian compensation practices into account.

Notable Issues

The CVM, through the new rules regarding proxy solicitation, is giving companies two options for providing shareholders with information on the general meeting. They may either cover the cost of soliciting proxies through the mail, or they may create a dedicated hostsite where all information will be made electronically available to shareholders and contract a service that provides a means for shareholders to vote electronically. Given the numerous impediments that have prevented both foreign and domestic shareholders from exercising their right to vote in the past, Glass Lewis expects to see a significant increase in the amount of investor participation in general meetings in 2010.

Canada

Regulatory Developments

In response to issuer criticism that the existing corporate governance regime was overly prescriptive and inappropriate for all companies, the Canadian Securities Administrators (CSA) published certain proposed changes to its existing corporate governance regulations on December 19, 2008 for comment. The proposals are reflective of the CSA's stated policy of periodically reviewing corporate governance regulations to ensure that they remain appropriate. Among other significant changes, the proposals contemplated: (i) replacing the existing list of specific guidelines with nine broad corporate governance principles; (ii) abandoning "comply-or-explain" disclosure requirements in favor of ones that are more general in nature; and (iii) replacing the current prescriptive definition of independence with a more principles-based approach.

In November 2009, the CSA suspended any changes, after receiving numerous comments from institutional investor groups about the timing and substance of the changes. Following the comment period, the CSA determined that it was not an appropriate time to recommend significant changes to the existing corporate governance regulations, stating that any future changes would not be effective until the 2011 proxy season at the earliest. Many institutional investors had argued that it was not a fitting time for such significant changes, as companies should instead be focused on sustaining their businesses amidst the economic downturn and on the transition to new international accounting rules. There was also some backlash towards what many investors considered to be regressive and more lax requirements.

In July 2009, the CSA released its "continuous disclosure" report of 1,094 companies, focusing on disclosure levels relative to the companies' respective management discussion and analysis filings and financial statements. According to the CSA, the report was intended to target the financial services sector and other highly leveraged issuers at risk of liquidity problems. The findings revealed that a full 80% of companies reviewed required some form of improvements in terms of their disclosure. The CSA also noted that 48% (up from 36% in 2008) of the reviewed companies were required to make changes or enhancements in their next filings as a result of deficiencies identified. Some companies were more severely reprimanded.

For financial years beginning on or after January 1, 2011, Canadian issuers will be required to prepare financial statements in accordance with International Financial Reporting Standards (IFRS). The transition from Canadian Generally Accepted Accounting Principles to IFRS is expected to benefit Canadian companies by providing better access to international capital, funding and investment opportunities.

Market Issues

The TSX Venture Exchange (“TSXV”) includes smaller, less established companies that are typically in the primary stages of business development. Consequently, TSXV issuers are subject to less stringent corporate governance and disclosure requirements than firms listed on the main market of the TSX. Companies listed on the TSXV generally have less independent representation on the board and their directors engage in significantly more related party transactions. Given the combination of these two factors, as well as the relatively lax requirements for TSXV companies, scrutiny of corporate governance practices at these firms continues to be increasingly important.

Many Canadian issuers choose to elect their directors as a slate, rather than individually. This practice serves to reduce individual director accountability, as shareholders must weigh their concerns against the entire board when voting for or against an entire slate of directors. As in previous years, Glass Lewis weighs the relative weight of director and/or board problems when deciding whether to vote against a slate of directors; however, our process for evaluating slate recommendations has become increasingly more stringent, as we consider the inability to vote for directors on an individual basis to be a serious deviance from sound corporate governance practices. A 2009 study by the Canadian Coalition for Good Governance revealed that 26% of Canadian firms on the S&P/TSX Composite Index continue to prevent shareholders from withholding votes from individual directors. While the number of companies employing this methodology continues to decrease, it remains a significant hindrance to the director election process.

In both 2007 and 2008, we recommended withholding votes from approximately 10% of director slates, while in 2009 the frequency of our withhold recommendations doubled to 20%. We expect the percentage of withhold recommendations to increase again during the 2010 proxy season, as our scrutiny of slates continues to tighten.

Election of Directors

Glass Lewis prefers that TSX-listed companies maintain a majority independent board. Additionally, we require that the audit, compensation and nominating and/or governance committee be composed entirely of independent directors. For TSXV-listed companies, we lower our independence requirement to two directors comprising at least one-third of the total board and a majority independent directors for each of the compensation and nomination and/or governance committees. However, we do not believe that insiders should serve on a board’s compensation committee. Further, although they are granted an exemption from this under TSX listing rules, we continue to believe that only independent directors should serve on the audit committees of venture firms.

Compensation Issues

In December 2009, the CSA finalized the terms of National Instrument 51-102, so as to provide additional clarity of its executive compensation disclosure requirements. This finalization comes as a supplementary enhancement to the previous amendment, proposed in February 2008, which made it a requirement for companies to: (i) disclose the total compensation awarded to named executive officers in a separate column of the summary compensation table; (ii) value plan-based equity awards according to the grant date fair value; and (iii) provide such information in plain language so as to provide clearer and simpler disclosure. These amendments were effected to eliminate some of the confusion surrounding the requirements and to create more consistency and comparability among Canadian issuers.

Notable Issues

Perhaps the most notable occurrence of 2009 was wide-spread support of shareholder “say-on-pay” proposals on the ballots of some of Canada’s largest listed companies. The proposal was up for vote at seven banks, as well as several other firms, including BCE Inc. and Potash Corporation of Saskatchewan. Upon receiving average support of about 46% in 2009, a 6% increase from 2008, thirteen large Canadian issuers made the

decision to place the matter before an advisory shareholder vote in 2010. For companies that did not adopt the resolution, Glass Lewis expects to see the proposal reappear in the upcoming year with substantially the same, if not more, support than last year.

Another significant development during 2009 was an amendment to the TSX Company Manual that now requires companies to seek shareholder approval for any acquisition requiring an issuance of securities in excess of 25% of the outstanding share capital. The new rules were inspired by a failed merger between HudBay Minerals and Lundin Mining Corporation whereby HudBay would have needed to issue 157.6 million new shares in order to finance the acquisition of Lundin, more than doubling the number then in issue and resulting in dilution of over 100% to existing shareholders.

Though initially approved by the TSX, opposition from several shareholders eventually led to a review of the matter by the Ontario Securities Commission (OSC), which exercised its seldom used authority to step in and overrule a TSX decision. The amendments came into affect on November 24, 2009, and will ultimately give shareholders greater control over capital management of the companies in which they invest. Given the high level of M&A activity seen on the TSX, shareholders should expect the opportunity to vote on an increased number of mergers in the coming years.

New Proxy Paper Features

At the start of 2009, we added a compensation page to our Canadian Proxy Papers, which utilizes quantitative analysis to compare the various segments of executive compensation levels for a company to that of a peer group. The amounts are then displayed in relation to several key performance metrics – such as TSR and EPS growth. In 2009, we provided this information for the top 60 companies on the TSX. In 2010, we will expand this coverage universe to provide this information for approximately 400 Canadian companies.

We will also continue to provide our clients with a thorough qualitative analysis of executive compensation policies and practices for the full TSX-60 index, with updated analysis on any notable changes or issues. Our analyses will focus on the CD&A section in each of the respective companies' filings and will provide insight as to the clarity and comprehensiveness of such disclosure – as well as the appropriateness of compensation structures and overall amounts paid, to test the link between pay and performance.

China

Regulatory Developments

Today, the capital markets in China are embracing new, faster and tougher corporate governance regulations. Legislators, regulators, and professional institutions have new laws, rules, regulations, and standards to provide a solid foundation for good corporate governance and stability to draw investors.

The recently revised company law aims to strengthen the corporate governance requirements for listed companies and the protection of minority shareholder rights through incorporating many of the facets of the Code of Corporate Governance for Listed Companies in China which was enacted in 2002. The Securities Law was also revised recently to protect the rights and interests of investors. The Basic Accounting Standards for Business Enterprises became effective on January 1, 2007. Today, financial reporting requirements in China reflect International Financial Reporting Standards and International Standards on Auditing. As such, while Chinese companies used to appoint a domestic independent auditor and an international independent auditor, respectively, many Chinese companies will appoint just one auditor for their auditing work. In addition, some improvements have been made following the release of the Regulations on information disclosure of listed companies in December 2006. As such, we expect to see that the information about Chinese companies and shareholders' meetings will be disclosed in a more transparent and timely manner.

Market Issues

Despite some progress, China exhibits serious and continued weaknesses which underscore the fundamental weaknesses of China's corporate governance infrastructure. In particular, the continued concentration of state-ownership, the absence of shareholder activism, problematic independence standards for company boards and supervisory boards, little financial accounting transparency and disclosure, as well as widespread accounting fraud are all issues that are continuously widespread throughout Chinese companies.

Election of Directors

In accordance with the Company Law of the People's Republic of China (the "Company Law"), Chinese companies may elect to be governed by a two-tier structure consisting of the board of directors and board of supervisors. The board of directors typically comprises executive, non-executive and independent directors. The board of supervisors typically comprises shareholder and employee representatives with limited independent representation. Employee representatives are elected by the company's employees and shareholder representatives are elected by the company's shareholders. The board of supervisors provides oversight of the financial affairs of a company and supervises members of the board of directors and management, while the board of directors makes decisions related to a company's business and investment strategies.

As many Chinese companies have significant levels of state ownership, block ownership is common in China. This means independent directors are often nominated and elected by the majority shareholder. In most cases, this is the State. In China, independent directors usually retain some link to the company either through state, labor, or other affiliates. Since the enactment of the Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies in 2001 (the "Guidelines"), many Chinese companies have increased the number of independent directors on the board of directors. The increasing independence, though certainly a positive sign for Chinese companies, is still not to the same level as international peers. We look forward to an increasingly independent presence on Chinese boards. In addition, the Guidelines state that whilst independent directors serve the same terms as other directors, they may not serve for more than six consecutive years. We will incorporate this policy in our voting guidelines for the upcoming proxy season.

Compensation Issues

In China, most companies merely disclose an aggregated amount of compensation for directors and/or supervisors. In addition, the absence of solid accounting and the prevalence of information asymmetries boosts management's autonomy in this matter. Most listed companies employ a system of compensation for management that includes a fixed base salary, as well as an annual bonus system. A recent revision to the Securities Law paves the way for the issuance of stock options for managers and directors. In addition, the Guidance on Further Standards for the Compensation of Executives in State-owned Enterprises has been issued recently. The limited salary regulation aims to effectively form the closely-linked mechanisms of executive's performance-based annual salary and actual business performance. However, China's lack of an accounting culture, coupled with the widespread practice of reporting only good news to higher-ups, make the organic development of a fair incentive mechanism extremely difficult in the near future.

Related Party Transactions Issues

The revised company law addressed the protection of minority shareholder rights in dealing with the issue of tunneling. Chinese companies are now required to gain shareholder approval for sales of assets, or any pledge of assets as guarantee, equal to or greater than 30% of the total value of the company's assets. However, there is no provision to disallow interested shareholders from voting.

In terms of the provision of unsecured deposit services by a financial subsidiary of the parent company, considering the extent and nature of the possible financial service, we are concerned that the company's unsecured deposits in a financial services company may be loaned to affiliated companies in the Group

without shareholder approval, thus exposing shareholders to undisclosed risks. We believe that it is not beneficial for shareholders to approve a proposal that is potentially harmful to their interests.

Notable Issues

Though the information disclosure in areas such as board of directors nominations, performance metrics and compensation for directors and managers, and auditor's compensation still remains a key issue, the 2009 Chinese proxy season introduced some promising signs of improvement in the corporate governance practices of the Chinese market, including areas such as information disclosure and shareholder rights. Despite this trend, these issues, such as the independence of the board of directors, the independence and the monitoring role of the board of supervisors, accounting fraud, and inadequate disclosure and regulation for intra-group lending demonstrate weaknesses in Chinese corporate governance and protection of shareholder value.

We expect the 2010 proxy season to herald a generally improved environment of corporate governance practices in China, but will continue to look closely at the market-specific circumstances in which Chinese companies operate. In particular, the areas of corporate transparency and of protection of shareholder rights will be of particular interest, and will require extra scrutiny throughout the coming years.

Denmark

Regulatory Developments

Danish corporate governance practices are primarily regulated by the Companies Act and the Recommendations for Corporate Governance (the "Recommendations") published by the Committee on Corporate Governance. On June 12, 2009, the Companies Act was updated to include the EU directive 2007/36/EF on shareholder rights. The new Act will come into effect on January 1, 2010. We anticipate that the new legislation will have a significant impact on shareholders voting at Danish companies in 2010, in that shareholders will be able, to a far greater extent, to make informed decisions on voting matters, and to inform companies of their voting instructions in a timely manner before the meeting. The Recommendations were last updated on December 10, 2008. On August 24, 2009, the chairman of the Committee for Corporate Governance announced impending revisions to the Recommendations, which will be presented in their final version in March/April 2010. In addition, the Accounting Act was amended to require the board of directors to establish an audit committee as a sub-committee of the board. We expect many companies to amend their governance structure pursuant to the various legislative changes, and in anticipation of the impending revisions to the Recommendations, which will most likely reflect the new legislation, and further attempt to align Danish corporate governance practices with those of neighboring countries.

Market Issues

Ownership in Danish listed companies is often concentrated in single or small groups of shareholders, who generally play an active ownership role through engagement with the company or through representation on its board of directors. In many cases, corporate control is dependent upon a dual-class share system where one class of shares typically has ten times the number of votes of the other class. One particular feature of Danish corporate governance is the prominent role played by foundations set up by the founders, which often exercise a controlling ownership of the company as their main purpose.

Election of Directors

Danish companies are generally governed by a two-tiered board structure, with a board of directors that appoints the members of the management board. At companies with more than 35 employees, employees have the right to appoint at least two representatives to serve on the board of directors. The Recommendations recommend that at least half of shareholder-elected members of the board of directors be independent of the Company and its major shareholders, and that no members of the management board

should serve as members of the board of directors. Major shareholders are defined as those who control 10% or more of the Company's share capital or voting rights.

Notable Issues

As a consequence of the new legislation, publicly listed Danish companies now have to make all documents pertaining to a general meeting available to shareholders at least three weeks prior to the date of the meeting. Previously, Danish companies only had to make the agenda and full proposals available to shareholders 8 days prior to the meeting.

Compensation Issues

Danish law requires that shareholders approve a company's general guidelines for incentive pay in a binding vote. The Recommendations specify that it is essential that performance-related pay serves to align executives' interests with those of shareholders, and that compensation practices and policies are transparent

Finland

Regulatory Developments

Finnish corporate governance is primarily regulated by the Finnish Corporate Governance Code ("the Code") and the Limited Liability Companies Act (the "Companies Act"). The Code provides recommendations for good corporate governance practices, whereby publicly listed companies must comply with the Code or explain the reasoning for any departure from the recommendations (so called "comply or explain" provisions). On November 2, 2009, the Finnish Securities Market Association, which also publishes the Code, released guidelines for the publication of listed companies' corporate governance statements, which should further standardize disclosure on corporate governance practices.

Market Issues

While not exceedingly common, dual class share structures are the most frequently used control enhancing mechanism in Finland. In addition, companies in which the State of Finland is the largest shareholder use a two-tiered governance structure, with a supervisory council whose members are representatives of the state (usually members of parliament). The supervisory council protects the state's interests, and the members of the board of directors are usually independent of the state and other major shareholders.

Election of Directors

Glass Lewis independence requirements, which are in line with Finnish best practices as outlined in the Code, require that a majority of shareholder-elected directors be independent of the Company and its executive management. A minimum of two directors should also be independent of major shareholders (i.e. those with beneficial ownership of more than 10% of the Company's share capital and voting rights). According to the Companies Act, the CEO cannot serve as chairman of the board.

Compensation Issues

Bucking the prevailing international trend, Finland has not yet implemented say-on-pay proposals at public companies. However, shareholders must approve: (i) the board fees to be paid to the company's non-executive directors; and (ii) all equity compensation plans. Unlike in many other markets, it is recommended that directors of Finnish listed companies are recommended to not participate in equity compensation plans.

France

Regulatory Developments

French corporate governance is centered primarily upon the French Commercial Code and the AFEP – MEDEF Corporate Governance Code, which is based in part on the Viénot and Bouton Reports. In addition, the Association Française de la Gestion Financière (“AFG”) published a revised version of its Recommendations on Corporate Governance in 2009, which serves as a compliance guide for French public companies. Finally, the Autorité des Marchés Financiers (“AMF”), which oversees the French stock market, has its own list of recommendations for French public companies.

As of February 22, 2009, all public companies have to comply with the Law for the Promotion of Employment, Labor, and Buying Power (“TEPA” law), which subjects new managerial employment agreements to shareholder and board approval. One measure of the TEPA law specifically links severance pay to the achievement of preset performance targets. However, supplemental retirement benefits and non-competition agreements are not subject to performance criteria.

We believe several regulations currently being considered in France may have a significant impact on French corporate governance in the future. For instance, a bill recently submitted to the French parliament would require that women make up 50% of board members in the country by 2015. Another important debate underway in France is whether to further regulate compensation practices in the financial industry, with many French politicians hoping to apply such regulations on a European, if not global, level.

Market Issues

As the effects of the financial crisis continue to be felt in French capital markets and in the country’s economic activity, the top market issues in France remain executive and director remuneration, risk management, and capital issues. While shareholder activism is not as pronounced in France as it is in other markets, 2009 saw an increased scrutiny of company and director remuneration. Regarding risk management and capital issues, several French companies experienced major losses in the 2008 fiscal year, which led to some reshuffling of management and board memberships as well as to a number of proposals to raise new capital.

Election of Directors

In accordance with French company law, companies may elect to be governed by either: (i) a single board comprising non-executive directors with some executive representation, usually chaired by the CEO; or (ii) a two-tier structure consisting of a management board, headed by the CEO and responsible for managing the company, and a supervisory board, headed by the chairman and primarily responsible for exercising control over the management board.

The board must consist of between three and 18 members, and may include employee representatives elected by the company. Glass Lewis generally recommends that at least half of the members of the board of directors, or supervisory board, be independent. Moreover, any board committees should consist entirely of non-executive directors. In addition, we expect that two-thirds of the members of the audit committee be independent while remuneration and nominating committees should be majority independent.

Compensation Issues

Shareholders in France do not vote on compensation policies. However, as mentioned above, companies must now seek shareholder approval of all new severance packages. In addition, shareholders also regularly vote on equity-based incentive plans. Common proposals seek shareholder approval, through binding votes, of the issuance of restricted stock and of the granting of stock options to employees and executives. We expect to see a continued high number of these proposals in the coming year, as French companies are notorious for using equity to compensate employees and management.

During the 2010 proxy season, we will scrutinize, in particular, the existence of detailed and challenging performance targets for all restricted stock issuances and stock options grants, which were often lacking in proposals presented at 2009 shareholder meetings.

Notable Issues

The 2010 season will most likely see a significant number of capital-related proposals submitted by companies hoping to revitalize their financing structure due to the continued credit crunch and slowed economic activity. Authorities to implement anti-takeover defenses are very common in France and will most likely continue to be presented in various forms, as in previous years. We will continue to warn shareholders of the fact that anti-takeover defenses impact shareholders directly and substantially in that these types of proposals are not conducive to good corporate governance and can reduce management accountability by substantially limiting opportunities for corporate takeovers.

New Proxy Paper Features

Our 2010 Proxy Papers for France will feature an enhanced analysis of related party transactions.

Germany

Regulatory Developments

German corporate governance practices are primarily regulated by the German Corporate Governance Kodex (“Kodex”) and the legally-binding German Stock Corporations Act (AktG or “Corporations Act”). The Kodex contains non-binding suggestions for best practices in corporate governance and “comply or explain” provisions (hereinafter referred to as “recommendations”). The Kodex, first published in 2002, was most recently amended in June 2009 with several noteworthy changes that mirror new provisions of the Corporations Act. The changes to the Kodex and the Corporations Act that are most notable for shareholders are those that aim to create a stronger link between executive pay and company performance, give shareholders greater influence over executive compensation, and increase independent oversight of management. In particular, the implementation of the landmark German Act on the Appropriateness of Management Board Remuneration (*Gesetz zur Angemessenheit der Vorstandsvergütung*, or “VorstAG”) in August 2009, amending the Corporations Act and the legally-binding German Securities Trading Act (Handelsgesetzbuch), will have a direct and immediately noticeable impact on executive compensation practices in Germany in 2010.

Market Issues

We expect that German companies will continue to lead European markets in shareholder activism during the 2010 proxy season as it did in the past proxy season. During the 2009 proxy season, shareholders of German companies submitted numerous shareholder proposals and counter motions on a broad range of topics, including requests for special audits, the removal or replacement of supervisory board members, restrictions on capital authorities, and alternate dividend proposals, among others. As the effects of the financial crisis continued to erode stock prices and shareholder value through 2009, shareholders responded to what they viewed as poor risk management, unfair treatment in government bailouts and poor compensation practices (see our 2009 Proxy Papers on Commerzbank AG, Deutsche Bank AG, and Hypo Real Estate AG). While we expect some of these same issues to continue to concern shareholders, we believe that new rules allowing shareholders to request advisory votes on management compensation (see Compensation Issues, below) will be the dominant topic for investor activism during the 2010 proxy season.

Election of Supervisory Board Members

Supervisory board members may be elected individually or as a slate in Germany. While the notice of meeting

often specifies the method of election, it can sometimes be unclear. Moreover, some sub-custodians only allow slate votes, despite the fact that elections may be held individually at meetings. As such, Glass Lewis often provides recommendations for both options.

Germany lags behind other European markets in disclosure of information related to the supervisory board. In fact, no German companies provide information regarding the independence of their supervisory board members. The Kodex recommends that supervisory boards and their committees be comprised of a “sufficient” number of independent members. Additionally, the Kodex merely defines an independent member as an individual who is free from conflict of interest that might compromise his or her judgment. Given this relatively ambiguous recommendation, Glass Lewis bases its policy on a combination of common market practice and what we believe to be reasonable standards for protecting shareholders’ interests. We require that a majority of shareholder-elect members of supervisory boards and their committees be independent, except in the case of controlled companies, where we allow proportional representation. However, we believe that minority shareholders should always have some independent representation on the supervisory board and that a company’s audit committee should always be majority independent.

In 2010, two new requirements regarding board independence will affect our analysis of supervisory boards. First, and most strikingly, the Corporations Act and Kodex were amended to prohibit former management board members from serving on the supervisory board within two years of their resignation from the management board, unless their election is supported by shareholders representing at least 25% of a company’s total share capital. German companies have a long history of nominating former executives to the supervisory board, and especially moving the chairman of the management board directly into the position of chairman of the supervisory board. While we are concerned that the new law may be overly prescriptive, we also recognize that it addresses a long-standing problem in Germany that has not been successfully resolved by comply-or-explain recommendations. As such, in cases in which at least 25% of shareholders support the election of a former management board member to the supervisory board, we will consider supporting the proposal if sufficient justification is given. Nonetheless, we believe that if a company intends to appoint the former management board chairman as chairman of the supervisory board, a thorough and well-reasoned justification will need to be presented in order for Glass Lewis to support the proposal.

The second notable revision to German board independence recommendations is a provision that requires that the chairman of the audit committee be independent. While the Corporations Act now requires that one member of the audit committee be independent, the Kodex specifies that this person should be the chairman. As the legal definition of independence in Germany remains open for interpretation, we will likely recommend voting against more audit committee chairmen in the 2010 proxy season by applying our standards of independence, which are often more stringent than companies’ definitions.

Compensation Issues

During the 2010 proxy season, compensation issues will likely become the key governance concern for shareholders as a result of extensive changes to the Kodex and Corporations Act during 2009. Among the more notable changes is the introduction of the possibility of including advisory votes on management board compensation to the agenda of annual meetings. While there is no requirement that these so-called “say on pay” proposals be included in the agenda, since the passing of the VorstAG law shareholders have already been lobbying companies to allow “say on pay” votes. Siemens AG, ThyssenKrupp AG and Wincor Nixdorf AG have set a precedent by agreeing to include an advisory vote on compensation on the agendas for their annual meetings in January 2010. We expect more companies to either follow suit or be subject to shareholder proposals requesting “say on pay.” Some supervisory boards may feel obliged to comply with shareholder requests, given that the amended Corporations Act also sets a new precedent for all members of a supervisory board to be held personally legally liable for their decisions regarding management board compensation. While shareholder approval of management board compensation will not affect the supervisory board’s responsibility or potential liability, it may provide a useful vote of confidence on boards’ compensation-related decisions.

In addition to the introduction of “say on pay” votes, the amended Kodex and Corporations Act create a

stronger link between executive pay and company performance. Both the Corporations Act and the Kodex now require that variable compensation reflect both positive and negative developments in a company's performance. The Corporations Act even requires supervisory boards to amend existing management board compensation contracts to ensure that executive pay is adequately linked to company performance. In addition, the Corporations Act requires that stock options be subject to four-year vesting periods, while the Kodex recommends that all variable compensation components be tied to multi-year performance criteria based on "demanding, relevant comparison parameters." Lastly, companies must now agree to a deductible (a minimum of 10% of the loss up to one and a half times annual compensation) for any D&O policy for the management board, thereby discouraging overly risky or short-sighted business decisions.

Notable Issues

As noted above, we expect debate on compensation issues to take a more prevalent role in the 2010 proxy season. While Glass Lewis will expand its compensation-related analysis of German companies, we also note that a significant number of German companies do not disclose individual compensation figures for management board members. Though disclosure on an individual basis is legally required, companies may opt out of the requirement for a period of five years if a two-thirds majority of shareholders approve the non-compliance. As a result, many closely-held companies have standing exemptions from this requirement.

Disclosure regarding supervisory board members in Germany is unlikely to change during the 2010 proxy season in the absence of more stretching recommendations or legal requirements. Without access to information regarding supervisory board members' backgrounds, potential conflicts of interest, term lengths, board meeting attendance, or other relevant information, shareholders will continue to face similar obstacles to assessing the composition and performance of the supervisory board as in previous years.

New Proxy Paper Features

Our 2010 Proxy Papers on German companies will include a page that summarizes management and supervisory board compensation amounts for the past fiscal year and compares these amounts to the company's peers, where the data is available. As a result, we will be able to provide more specific analysis of relevant compensation issues in our analysis of "say on pay" proposals and elections of supervisory board members.

Hong Kong

Regulatory Developments

Hong Kong corporate governance is centered primarily upon the Companies Ordinance, the Securities and Futures Ordinance and the Listing Rules (the "Listing Rules") of Hong Kong Exchanges and Clearing Limited (the "HKEx"). In 2005, the Listing Rules were amended to include a new code on corporate governance practices (the "Code"). The Code consists of two tiers of recommended board practices. The first tier includes the code provisions which operate on a 'comply or explain' basis. The second tier consists of recommended best practices, which are provided as guidance only. The revised Listing Rules in 2009 include the new policy for director black-out periods, voting by poll at shareholder general meetings, corporate communication methods and director-related disclosures.

Market Issues

In comparison with other Asian countries, there were not many substantial issues regarding corporate governance and scandals in Hong Kong during the 2009 Proxy Season. In 2007, the Asian Corporate Governance Association ranked Hong Kong best of eleven Asian countries in its survey on Asia's corporate governance. ("Hong Kong Tops Asia's Best Corporate Governance Survey." *www.forbes.com*. September 25, 2007). In Hong Kong, the majority of listed companies are family-owned or family-oriented. While

single controlling shareholder may influence a company's decision and act against the interests of minority shareholders, Hong Kong has a well developed equity market and enforces strong financial structures and banking systems compared to other Asian markets. David Webb, a veteran shareholder activist in Hong Kong, argues that this is the historical explanation for the relative lack of shareholder activism in Hong Kong.

Election of Directors

The board structure of Hong Kong companies is best categorized as one-tier, a unitary board system with committees. Boards typically comprise executive, non-executive and independent directors. Non-executive directors of a company participate in meetings equally with executive directors, although the non-executive directors often meet separately and normally form the audit, compensation and nomination committees. Also at most companies, the roles of chairman and CEO are not separated. Board size is not strictly regulated, but at least one member of the board must have financial expertise, as defined by the Listing Rules. In addition, in order to comply with the Listing Rules, a listed company's articles of association normally contain provisions requiring the retirement of directors by rotation at least once every three years.

As recommended by Hong Kong's Code on Corporate Governance Practices, we believe that at least three or one-third of the board, whichever is higher, should consist of independent directors. In addition, in accordance with the Listing Rules and the Code, we believe that the audit committee should consist solely of non-executive directors, the majority of whom are independent, and the compensation and nominating committees should be majority independent. Insiders may serve on the compensation and nominating committees.

Compensation Issues

Hong Kong companies are required to disclose the breakdown of compensation paid to each director in absolute figures under categories such as directors' fees, salary and bonus, contribution to retirement scheme, equity-based compensation and so on. While the specific amount paid to a director is provided, details of the compensation policy usually lack substantive information. Shareholders are asked to approve only the board's authority to fix compensation payable to directors for the next fiscal year and companies do not provide detailed information regarding compensation proposals, such as payment amount and compensation policy. Equity-based compensation may be granted to directors by boards under the maximum limit provided by companies' equity-based compensation policy approved by shareholders. Typically, details regarding the performance targets, including the method of evaluation and computation of performance, are not disclosed, and the administrator of the plan is given considerable leeway in determining targets and evaluating the levels of achievement. In Hong Kong, currently there are no "say-on-pay" proposals, which are now common in the U.S. and certain European markets.

Notable Issues

Hong Kong is recognized as having a sound legal system, enhanced corporate governance practices and as meeting the international business standards and codes. Information regarding auditors and auditor fees as well as independent director, related party transactions, directors' compensations and board committee assignments are generally made available to shareholders in documents such as the annual report. However, many Hong Kong companies fail to provide more detailed information regarding cash or equity-based compensation amounts and policies for directors and supervisors.

While there were no changes to the Listing Rules with regard to the general issue mandate, share issuance proposals routinely presented by companies have been a debatable issue raised by some shareholders, including active shareholder in Hong Kong, David Webb.

New Features in upcoming Proxy Papers

Our 2010 Proxy Papers on Hong Kong companies will provide voting results of previous annual general meetings and a top shareholder list, where the data is available. In addition, the compensation page will be offered in a higher number of Hong Kong companies and will compare chairman's, executive directors' and

non-executive directors' pay to that of company peers. Additional information will be delivered in equity-based compensation and corporate transactions proposals for better informed judgment. As a result, we will be able to provide more detailed voting recommendations and in-depth analysis on relevant proposals.

Italy

Regulatory Developments

Italian best practices are primarily based on the Corporate Governance Code (“Code”) issued by the Italian Stock Exchange. The Code, which contains a body of non-compulsory best practice rules for the governance of listed companies, was released in 1999 and subsequently reviewed in 2002 and 2006. The Italian Stock Exchange is currently revising the Code. The updated version, which has not yet been released, is expected to provide new recommendations on the dualistic governance structure, board independence and executive remuneration. Other noteworthy regulations currently being debated relate to the implementation of the EU Directive on Shareholder Rights, related party transactions and female board representation.

Market Issues

Cross-shareholdings among Italy’s most influential groups, shareholders’ pacts, and pyramidal structures have been traditionally seen as being prejudicial to the interests of minority shareholders and deterring foreign investors. The slate vote system, which was introduced to allow minority investors to play a more effective role in the election of the board of directors and board of statutory auditors, has represented a positive development. Nevertheless, it has been only partially effective given the fact that a number of companies have reserved only one board seat to minority candidates. In addition, partially as a result of the financial crisis, certain institutional investors were unable to reach the quorum necessary to submit a list of candidates.

Election of Board Members

Boards are elected on the basis of lists of candidates presented by shareholders who hold a minimum percentage of the company’s share capital pursuant to the so-called “voto di lista” or slate vote system. The articles of association set the required minimum investment, which, however, cannot exceed a fortieth of the share capital or the different measure established by Consob, based on the company’s capitalization, free float and ownership structure.

The Code does not provide for a specific number of independent directors. It only states that the number of non-executive directors should be such that their views can carry significant weight in making board decisions and that an adequate number of non-executive directors should be independent. Glass Lewis generally recommends that the board consist of a majority of non-executive directors and at least 50% be comprised of independent members, except in the case of controlled companies. However, we believe that minority shareholders should always have some independent representation on the board and that a company’s audit committee should always be majority independent.

With regard to the choice among competing slates of candidates, we will review the background of the candidates on each list to assess whether they bring an appropriate level of experience to the board, as well as to identify any affiliated transactions that we consider to bias them as board members. Glass Lewis will recommend supporting the slate that appears able to best protect the interests of all shareholders, including minority investors.

Compensation Issues

Under Italian law, shareholder approval is required to set the fees to be paid to the members of the board. The board of directors determines the compensation of those directors who are appointed to particular positions, after consultation with the board of statutory auditors. Where permitted by the company’s articles of association, shareholders can determine a cap on the total compensation of all directors, including those

invested with additional duties. Furthermore, pursuant to regulation introduced by the Bank of Italy, which went into effect in June 2009, banks are required to submit their remuneration policies to shareholders for a binding vote.

Notable Issues

Almost a third of Italian publicly listed companies will renew their board of directors or supervisory board during the upcoming season. It can be estimated that a total of approximately 900 candidates will be put forward and voted on in accordance with the abovementioned slate vote system. Moreover, we expect the new regulation introduced by the Bank of Italy to increase scrutiny of pay practices at financial institutions.

Japan

Regulatory Developments

The Corporate Governance Study Group, organized by the Ministry of Economy, Trade and Industry (METI), published a report examining the issues concerning board independence at Japanese firms in June 2009. The report promoted some independence presence on company boards but in a cautious manner citing the potential tradeoff between increased independence and management efficiency. It nonetheless stressed that there should be at least one independent (not just outsider) board member (director or statutory auditor), and proposed a comply-or-explain model of appointing at least one outside director or explaining non-compliance.

In June 2009, the Financial Systems Council organized by the Financial Services Agency also published its report that reviewed corporate governance issues ranging from capital issues to framework to implement governance discipline. The report recommends several measures, such as placing restrictions on large-scale private placements, strengthening the function of the board of statutory auditors, and appointing one or more independent directors to protect and enhance minority shareholder interests. The report also argues that exercise of voting rights is a major element of institutional investors' fiduciary duties and that institutions should disclose proxy voting guidelines and voting results.

In August of 2009, the Tokyo Stock Exchange (TSE) put in place a much needed system to restrict private placements. For any private placements that result in more than 300% dilution, the TSE is to review the transactions. The TSE now mandates issuers to obtain either the fairness opinion from an independent third party or prior shareholder approval if the transaction results in a change in control or dilution of more than 25%. The TSE also requires more information disclosure, such as availability of the funds and rationale of the issue price.

Additionally, the TSE published the Listing System Improvement Action Plan in September 2009. The action plan laid out steps the TSE will take, many of which are in line with those made by METI and FSA, to enhance corporate governance and improve transparency of listed companies. The TSE plans to adopt a comply-or-explain rule on board structure by the 2010 proxy season. The TSE's new rule is expected to ask listed companies to appoint at least one independent board member to either the board of directors or the board of statutory auditors or, should the company choose not to appoint an independent board member, explain its own system of governance and how it will be effective. The TSE is also recommending that issuers disclose ballot results, use the ICJ platform, adopt IFRS, and dispatch proxy materials through the TSE website.

On August 30, 2009, the Democratic Party of Japan ("DPJ") came into power by a landslide victory, ousting the Liberal Democratic Party, a party which, except for a short period between 1993 and 1994, has held continuous power in Japan for over half a century. DPJ is to enact a "Public Companies Law" by 2012 which would bring about major reforms to the capital market. The "Public Companies Law" is in the making and its content has not been publicly disclosed; however, it is said to mandate employee representation on the board of statutory auditors, one-third independence on the board of directors, abolition of subsidiary listing, dispersion of shareholder meeting concentration and the strengthening of the board of statutory auditors.

We expect continued developments designed to attract investment and prevent investor flight from the Japanese market. We will closely monitor these developments, as they will highlight the importance of corporate governance issues throughout the market in coming years.

Market Issues

Obtaining filings and disclosure in general has historically been extremely problematic in Japan. Japanese companies are required to distribute their meeting notice and agenda to shareholders at least 14 days prior to the meeting of shareholders and these documents are rarely distributed electronically or translated in English. A vast majority of Japanese companies hold annual shareholders' meetings during the month of June and over 50% of all listed companies have historically held their annual meetings within a two to three day period at the end of June. The combination of the timing of disclosure and the high concentration of meetings creates significant challenges for investors who wish to participate in the voting process.

However, we are encouraged by the TSE's Listing system Improvement Action Plan by which the TSE would facilitate electronic dispatch and early dispatch of proxy statements, release of proxy materials in English and staggering of shareholder meetings. We are concerned that these are not mandated but are optimistic that these will have positive impacts on Japanese firms. We expect to see an increase of outside board members, disclosure of their affiliations if any, disclosure of vote results and an explanation of governance system in the corporate governance report as well as in the proxy filings.

Election of Directors

The conventional board structure of Japanese companies is two-tier, comprised of a board of directors and a board of statutory auditors. The board of directors of a two-tier board is generally dominated by insiders and is responsible for day-to-day management of the company. Amendments to the Commercial Code introduced a U.S.-style one-tier board structure to Japanese companies consisting of a board of directors with three committees: audit, nomination and compensation. Though the Company Law stipulates that at least half of each committee should be made up of outside directors, under Japanese law, executives of parent companies and affiliates can qualify as 'outsiders.'

The board of statutory auditors essentially functions as a supervisory board and its primary role is to audit directors' conduct and monitor financial reporting. The Company Law requires that corporations over a certain size have a minimum of three statutory auditors, at least one of whom must be full-time, and at least 50% of whom must be external statutory auditors. However, as in the case of directors, there is no definition of 'independence' for statutory auditors, and affiliates often serve as so-called 'external' statutory auditors.

Glass Lewis believes that at least two directors on the board of directors of two-tier boards should be independent. We will continue to recommend that shareholders vote against the re-election of the chairman or the most senior member of the board where the board has insufficient independent representation. However, we will always review the board structure on a case-by-case basis, and we encourage firms to explain their own system of governance and its efficacy. As for the unitary board, we believe that at least one-third of the board should be independent outside directors and that each committee should be at least one-half independent. Similarly, we believe that at least one-half of the board of statutory auditors should be independent.

Controlled companies where an individual or entity owns more than 50% of the voting rights present an exception to our independence recommendations. We suspect that most, if not all, shareholders both understand and accept the nature and the extent of the controlling shareholder's influence over the company and the composition of its board. Thus, we decline to make voting recommendations based on strict notions of independence at controlled companies.

We will continue to closely scrutinize cross-shareholdings and excessive investments in marketable securities. Empirical research has found a correlative relationship between a decrease in cross-shareholding relationships and a converse increase in corporate performance, suggesting that cross-shareholding relationships are more

likely to suppress the shareholder value than enhance it. Additionally, highlighted by the global economic crises, many companies are reporting extraordinary losses due to valuation losses. We will monitor companies that maintain a high level of cross-shareholdings and high exposure to other companies' equities and bring them to shareholder attention.

We note that the Japanese laws and regulations require public companies to disclose only outside directors' and external statutory auditors' attendance at board meetings, but not the attendance records of insiders. We believe that attending board meetings is one of the fundamental responsibilities of a board member and that all directors and statutory auditors should attend board meetings regularly to review the company's performance and to ensure the protection of shareholder interests. That said, we note that Japanese companies typically hold board meetings on a monthly basis, if not more frequently, and that outside board members are still a small minority in Japanese boards. We are therefore concerned that voting against outside directors and statutory auditors for failing to attend board meetings that are held so frequently may result in unfairly punishing outside board members and discourage appointment of outside board members which, in our opinion, is contrary to shareholder interests. Accordingly, we refrain from making voting recommendation based on attendance for Japanese companies.

Compensation Issues

Discussion of compensation packages and policies has largely been absent in Japan. Compensation structures at Japanese companies generally do not clearly link mid to long-term shareholder interests with those of executives', and fees paid to executives are exceptionally low compared to other developed markets. However, some companies, such as Shiseido, have adopted a compensation policy that awards executives for increasing mid to long-term value of the firm. We anticipate that a greater number of companies will follow Shiseido's lead and adopt more transparent and effective compensation plans.

Additionally, an increasing number of companies have been abolishing the traditional seniority-based retirement bonus system and adopting a more flexible compensation structure aimed at tying a portion of executive pay to performance, though the measurement of such performance is generally opaque.

Notable Issues

The trend toward an accelerated number of companies adopting or renewing takeover defense plans significantly slowed in 2009. Notably, some companies have voluntarily abolished or discontinued their takeover defense plan, though the number of companies introducing takeover defense plans still far outnumbers that of companies abolishing them. We believe that the number of companies adopting takeover defense plan will continue to decrease in 2010. Nonetheless, the scrutiny of takeover defenses at Japanese companies is likely to continue.

In addition, shareholder activism, which was gaining popularity and momentum has been restrained. However, given active engagement between companies and the investor community and the lack of access to capital as a result of the fallout from the global financial crises, whether the change represents a temporary or permanent shift remains to be seen. One of the most notable of these activist investors is Steel Partners Japan, which, in 2009, successfully appointed a slate of its nominees at Aderans, a Japanese wig-maker.

Historically, shareholders of Japanese companies have been predominantly passive, but in recent years, some investors have begun to actively utilize their rights as shareholders to attempt to improve the return on their investments. Notwithstanding, investors, both domestic and overseas, are demanding better returns from their investments, greater protection of their interests and increased accountability of management and directors at portfolio companies. Though shareholder activism waned in 2009, voices of investors are increasingly becoming difficult to ignore as more investors attempt to improve the return on their investments through engagement and proxy voting. Lastly, with the TSE pushing for a comply-or-explain model of governance, Japanese boards will likely be demanded to provide greater transparency and be held accountable for their actions.

New Proxy Paper Features

We will continue to provide thorough research and analysis on all matters regarding corporate governance including board and management transparency and accountability. Furthermore, our 2010 Proxy Papers will provide greater detail on director and statutory auditor independence as well as directors' and statutory auditors' attendance records. Additionally, with regard to companies that propose to adopt or renew a takeover defense plan, we will require that the board of directors satisfy our independence threshold as the ultimate decision often lies with the board, irrespective of the design of the plan, and as such, board independence is imperative to protect shareholder interests.

Korea

Regulatory Developments

Korean corporate governance is primarily centered on the Commercial Act, the Capital Market and Financial Investment Business Act, and the Stock Market Listing Regulations (the "Listing Regulations") as well as the Code of Best Practices for Corporate Governance (the "Code"), which includes the recommended guidelines released by the Committee on Corporate Governance (CCC) in 2003. In early 2009, the Commercial Act was amended and six finance-related laws, including the Securities and Exchange Act, were consolidated into one law called the Capital Market and Financial Investment Business. The newly changed laws provide clarification of the voting method to appoint or remove directors and audit committee members, the expansion of participant range in share option plans, and the inclusion of electronic communication methods between companies and shareholders through the unitary website operated by the government and the stock exchange.

Market Issues

In recent years, shareholders have been able to see the critical weakness of corporate governance in chaebols, Korean style conglomerates. The complicated series of crossholding investments in chaebols also caught the public's attention. The various decisions of courts regarding chairmen of chaebol groups, including Hyundai and Samsung, have been condemned since people believe that there has been a long-term pattern of Korean courts dealing out light penalties to prominent business executives, citing their importance to the nation's economic growth.

Election of Directors

Korean companies are required to adopt either a two-tier board system (board of directors and corporate auditors) or a one-tier board system (board of directors and audit committee) based on their asset size. With limited exceptions, the laws require large listed companies with assets over KRW 2 trillion to adopt a one-tier board system and small listed companies with assets of less than KRW 2 trillion to adopt one of the two board systems.

Due to the different legal requirements based on asset size, Korean companies adopting a one-tier board system must seek shareholder approval on the appointment of audit committee members separately from the election of directors. The separate voting requirement pertaining to the election of directors and the election of audit committee members was legislated in order to strengthen the independence of the audit committee members.

In conjunction with relevant laws and regulations, we believe that at least one-half of boards operating under the one-tier board system, and at least one-fourth of boards operating under the two-tier board system should be independent, and the audit committee should consist of more than two-thirds independent directors, including its chairman. In addition, an independent director candidate nominating committee ("nominating committee"), which is responsible for nominating independent director candidates, should consist of at least one-half independent directors.

At most companies in Korea, the roles of chairman and CEO are not separated. Pursuant to the Commercial Act, the term of office for each member must not exceed three years.

Compensation Issues

Under Korean law, shareholders are asked to approve only the proposed maximum limits on annual compensation payable to directors and corporate auditors, respectively, without additional details, such as a breakdown of compensation or range of payment amounts for each director. Proposed annual caps usually include the aggregate amounts of directors' fees for all directors and any other compensation for executive directors, such as bonuses, performance incentives, equity-based compensation and other benefits. In quarterly and annual reports, Korean companies provide accumulated aggregate amounts of compensation paid to directors and/or corporate auditors during a fiscal year. Their disclosure usually includes very minimal information, lacks substantive information and does not provide sufficient detail about cash and equity-based compensation policies. Any share option grant already implemented or planned for the future requires shareholder approval. Typically, details regarding the performance targets, including the method of evaluation and determination of performance, are not disclosed, and the administrator of the plan is given considerable leeway in determining targets and evaluating the levels of achievement. In Korea, there are currently no "say-on-pay" proposals now common in the U.S. and certain European markets.

Notable Issues

The Korean government recently announced its plan to revise the Commercial Act and allow for the adoption of poison pill anti-takeover defense systems at public companies. Adoption of anti-takeover defense methods has in the past few years been one of the most contentious issues in Korea, causing a number of controversies about both the potential benefits and disadvantages for shareholders and management alike. Under the current Commercial Act, the repurchase of shares is widely considered the only significant defensive tool for companies. If effective, the poison pill provision will enable companies to issue new shares at below-market prices to all shareholders excluding the hostile bidder, resulting in prohibitively expensive takeovers.

New Proxy Paper Features

Our 2010 Proxy Papers on Korean companies will provide updated standards for the evaluation of directors' and corporate auditors' fees based on our research on top companies in each different asset size. Additional details of equity-based compensation will be delivered in relevant proposals for better informed judgment. Given the importance of a director's role, any executive directors on compensation committees will be more carefully reviewed in order to strengthen the transparency and independence of the compensation committee. We will continue to provide thorough research and analysis on the matters regarding corporate governance including board and management transparency and accountability, amendments to articles and shareholder proposals. As a result, we will be able to provide more detailed voting recommendations and in-depth analysis.

Malaysia

Regulatory Developments

The Malaysian Code on Corporate Governance was first issued in March 2000 and was revised in 2007 to bolster the function of company boards of directors and audit committees. Bursa Malaysia (BM) currently has in place a hybrid approach to corporate governance regulations that is similar to the Combined Code on Corporate Governance in the U.K. It combines the Companies Act of 1965 and Listing Requirements (both mandatory) with the Malaysian Code on Corporate Governance (which is voluntary). BM established a corporate governance department in April of 2008 to construct, implement and monitor the corporate governance policies of listed companies, ultimately elevating its corporate governance standards to those of well-governed international markets.

On August 3, 2009, the Securities Commission and Bursa Malaysia established a unified board by merging the Main Board and Second Board of Bursa Malaysia, with the goal of enabling efficient access to capital and investments. This move aims to attract more public company listings and diverse investments. Additionally, the MESDAQ Market was renamed to ACE Market, and is intended to be a place where local and foreign companies from all sectors may compete to raise funds.

Market Issues

While government and regulatory agencies have made efforts to reform corporate governance practices in Malaysia, the implementation of such reforms is questionable, as charges of corruption persist. As with many other Asian markets, transparency and disclosure remain major challenges that shareholders face. Disclosure of compensation plans, especially information concerning equity compensation, as well as disclosure of auditor remuneration is generally limited. Subsidiary listing, whereby a parent company controls the majority of the stake in a public company, is commonplace, and abuse of power by controlling shareholders is a persistent concern.

Election of Directors

In accordance with the Bursa Malaysia Securities Berhad Listing Requirements and the recommendations set out in the Malaysian Code on Corporate Governance, Glass Lewis believes that at least one-third of the board should be independent and that listed companies must establish an audit committee with majority independence in which at least two of the members have relevant experience. The Code also recommends that listed companies establish remuneration and nominating committees. While an insider may serve on the remuneration committee, provided that it consists of a majority of non-executive directors, the nominating committee should consist solely of non-executive directors, a majority of whom are independent. Additionally, we believe that each of the audit, remuneration and nominating committees should be chaired by an independent non-executive director so as to ensure fair and objective oversight.

We do not anticipate substantial changes to our board election policy with regards to Malaysian companies. As seen commonly in other Asian markets, in Malaysia, a significant number of companies continue to operate under concentrated ownership whereby the board is dominated by members who are connected to substantial shareholders. We will apply particular scrutiny to related party transactions to ensure that transactions entered into by a company are not contrary to the interests of its shareholders.

Compensation Issues

In Malaysia, the compensation of each director is not required to be disclosed and generally, only an aggregate sum of compensation paid to all directors is disclosed. Executive directors are usually compensated with directors' fees, salaries, cash bonuses, equity incentives, benefits, and other allowances, while non-executive directors generally are compensated with directors' fees. Although companies are required to disclose some details of director compensation and their compensation policy, the discussion on director and executive pay is generally superficial at best. Shareholders can vote on neither total compensation packages nor compensation policies themselves; shareholders are asked to approve only directors' fees payable. In Malaysia, there are presently no "say-on-pay" proposals now common in certain European markets.

Companies routinely seek shareholder approval to grant the board authority to issue shares pursuant to equity-based compensation plans. Typically, however, the details regarding the performance targets (including the method of evaluation and determination of performance) are not disclosed, and the administrator of the plan is given considerable leeway in determining targets and evaluating the levels of achievement.

Notable Issues

On June 9, 2009, Bursa Malaysia, together with the Minority Shareholder Watchdog Group, launched the Corporate Governance Index to rate listed firms on the bases of conformity to recommendations, performance and engagement. We believe that this development will contribute to listed companies taking proactive

steps to upgrade their compliance not only with the Malaysian Code on Corporate Governance but with international standards, as well.

Netherlands

Regulatory Developments

In December 2008, the Dutch Corporate Governance Code Monitoring Committee (the “Frijns Committee”) submitted a revised Dutch Corporate Governance Code (the “revised Code”) that was intended to replace the 2003 Corporate Governance Code (the “old Code”). The revised Code applies to the financial years starting January 1, 2009, meaning that any changes companies need to make to be compliant with the revised Code will be voted on at the 2010 annual meeting of shareholders.

The driving force behind the revised Code was regulators’ belief that the old Code had become too rules-based, with companies spending valuable resources on complying with detailed reporting requirements, rather than focusing on more important issues that may not have received the necessary attention. As a result, the revised code places an increased emphasis on how the key stakeholders—the supervisory board, management and shareholders—perform their duties in practice, as opposed to how they account for their actions in retrospect.

The key changes to the Code are in the areas of risk management, executive pay, shareholder responsibility, diversity in the composition of the supervisory board and corporate social responsibility. In addition, the supervisory board’s authority with respect to takeover bids has been strengthened.

Since most Dutch companies, in our view, did not have mechanisms to implement the Frijn’s Committee’s recommendations by their 2009 AGM, we expect that many of these issues will be addressed at the 2010 AGM. As stated above, most, if not all companies will include a proposal at their 2010 AGM regarding their compliance with the revised Code.

In July 2009, the Dutch government formally submitted a bill to the Dutch parliament that, if approved, may have a significant and immediate impact on the corporate governance practices of listed companies in the Netherlands. The proposed bill, which was borne out of recommendations of an assessment of the 2003 Corporate Governance Code, is intended to enhance the relationship between companies and their shareholders. If approved, a mechanism would be introduced to identify companies’ “ultimate investor” so that companies can more effectively communicate with their investors. In addition, the minimum threshold for owners to publicly notify of their substantial holdings would be decreased from 5% to 3%.

Among the more contentious provisions of the bill is the requirement for significant shareholders (those owning more than 3%) to publicly disclose their support or opposition to a company’s proposed strategy and the increase in the minimum threshold to place an item on the agenda from 1% to 3%. As of now, the bill is still being debated in the Dutch parliament, and to our knowledge, no timeline has been placed on its final approval. However, we expect some companies to propose changes to their articles of association in anticipation of the bill being signed into law.

Because compliance with the EU’s Directive on Shareholders’ Rights was required by August 2009, we expect we will see some significant changes from companies that had not yet implemented the directive for the 2009 proxy season. Most importantly, all Dutch public companies shall now have a mandatory record date of 21 days prior to the date of the meeting. The directive has also set several disclosure standards. All companies will have to make their meeting materials available to shareholders on their website 30 days prior to the meeting. Companies will also be required to post the results of the annual meeting no later than 15 days after the meeting.

Market Issues

The Netherlands has, in the past, been one of the more stable European markets with respect to corporate

governance. Companies in the Dutch market tend to abide by the established set of internal standards and European directives that guide commercial life, a trend that we do not expect to change even with the implementation of a revised Code. In the Netherlands, as with many other western European markets, disclosure of information about supervisory board members, management, compensation policies and the auditors and their fees, is generally good.

The Dutch market, however, has had a history of implementing protectionist measures, and many companies still provide a mechanism in their articles of association that authorizes, and in some cases, obliges the use of protective preference shares without shareholder approval. The use of protective shares has been a rarity, however, and in recent years, some companies have proposed cancelling these preference shares; we expect this trend to continue in 2010.

Election of Supervisory Board

In accordance with the recommendations set out in the revised Code, Glass Lewis believes that each of the members of the supervisory board, with the exception of one person, should be independent and that listed companies should establish an audit committee composed entirely of independent directors, one of whom shall be deemed a financial expert. The revised Code also recommends that listed companies establish remuneration and nominating committees. We note that there were no substantial differences between the old Code and the revised Code in this regard.

We do not anticipate substantial changes to our board election policy with regards to Dutch companies. As noted above, however, one of the key changes to the corporate governance Code is the diversity of the board. The board will be required to submit a profile of its directors that includes a section on the board's goal of having a diversely-composed board, indicating how and within what period it expects to achieve this objective.

Compensation Issues

Dutch shareholders can exercise a binding vote on executive compensation policy, and share and option schemes. However, unlike in the U.K. and Sweden, where shareholders must vote on compensation programs annually, Dutch shareholders only vote if a new compensation program is proposed or if there is a material amendment to the current policy.

The revised Code recommends that when executive pay is determined, pay differentials within the company must be taken into account, and the ratio of variable to fixed remuneration must be appropriate. In addition, remuneration should be in keeping with the company's risk profile. Supervisory boards will also have broader power to determine executive remuneration and will have the authority, if necessary, to claw back remuneration paid out to executives based on incorrect financial data.

In September 2009, the Netherlands Banking Association published a Banking Code, which set compensation guidelines for Dutch Banks. The new Code, which came into effect on January 1, 2010, will, among other things, limit variable pay for executive board members to the same level as their annual salary.

We expect many companies, having reviewed their own compensation guidelines vis-à-vis the revised Code or the Banking Code, will make some changes to their compensation policy that will require a shareholder vote at the 2010 AGM. As with all compensation proposals, we will evaluate any changes on a case-by-case basis.

Norway

Regulatory Developments

Norwegian corporate governance practices are primarily regulated by the Public Limited Liability Companies Act (the "Companies Act") and the Norwegian Code of Practice for Corporate Governance (the "Code"). On June 19, 2009, the Companies Act was updated to include the new provisions in the EU directive 2007/36/EC on shareholder rights. Meanwhile, the Code was last updated on October 21, 2009. We anticipate that the

new legislation and recommendations in the Code will have a significant impact on shareholder ability to vote at Norwegian companies in 2010, in that shareholders will be able, to a far greater extent, to make informed decisions on voting matters, and to inform companies of their voting instructions in time before the meeting.

Market Issues

The Companies Act stipulates that a company only has one class of shares, unless the articles of association specifically state that there are different classes of shares. However, the Code recommends that companies have only one class of shares, and this is the prevailing practice. This separates Norwegian practices from the rest of the Nordic region in general, where, in Sweden and Denmark in particular, dual class share structures are common.

Instead of having a nominating committee composed of board members, which is the prevailing international practice, the Norwegian governance structure requires a committee composed of shareholder representatives, who may or may not be directors, elected by shareholders. The nominating committee is in charge of selecting nominees to serve on the board of directors and the nominating committee, the corporate assembly, and the auditors, will suggest procedures for their compensation. Glass Lewis generally evaluates candidates for the nominating committee based on their external affiliations and past performance.

Election of Directors

Norwegian companies can be governed by either a one-tier or a two-tier board structure, consisting of a board of directors and, in a two-tier structure, a corporate assembly. Any company with more than 200 employees is generally required to have a corporate assembly, with two-thirds of the members elected by shareholders and one-third elected by the company's employees. If a company agrees with its employees not to have a corporate assembly, employees have the right to appoint additional representatives to the board of directors.

We believe that a majority of shareholder-elected directors should be independent of the company and its executive management and that no member of executive management should serve as a director. Furthermore, the Norwegian Public Companies Act prohibits the CEO from serving as chairman and requires that public companies have boards of directors consisting of at least 40% women. However, the Code recommends that only a minimum of two directors be independent of the Company and its executive management as well as independent of the major shareholders (i.e. those with beneficial ownership of 10% or more of the share capital or voting rights). Therefore, Norwegian boards are often composed of a majority of directors who represent substantial shareholders.

The latest version of the Code recommends that the entire board of directors not serve as an audit committee, and that a majority of the members of the audit committee be independent. Given that having the board serve as an audit committee is common practice in Norway, in smaller companies especially, we expect many companies to establish separate audit committees in 2010.

Notable Issues

As a consequence of the amendments to the Companies Act, notice of a general meeting, along with any documents pertaining to the meeting, must be made public 21 days prior to the meeting. Previously, documents were routinely not publicly available in time for shareholders to vote by proxy. In addition, companies are now required to provide opportunities for shareholders to vote either electronically or by proxy. We believe that the new legislation will give shareholders a far greater ability to make informed decisions regarding proposals, and to more effectively cast their votes in time for the meeting.

Compensation Issues

Pursuant to the Norwegian Public Limited Liability Companies Act, shareholders must consider the board's declaration concerning the compensation of the chief executive officer and senior management. A non-binding vote is required on the board's guidelines for determining executive compensation, while shareholders must

approve the guidelines pertaining to the allocation of shares, options and other equity-based compensation.

Poland

Regulatory Developments

The Commercial Companies Code, which guides commercial life in Poland, was amended in 2009 to comply with the EU Directive on Shareholders' Rights. The changes will have a significant effect on the reporting requirements with respect to the convening of general meetings. We expect companies to disclose their materials in a more timely manner. Previously, listed companies provided very limited information on shareholders' meetings prior to the meeting date. Among the changes is the requirement for listed companies to give notice to shareholders at least 26 days in advance of the meeting and to include drafts of the resolutions to be adopted at the meeting or, if it's not available, the management or supervisory board's comments on the agenda items. In addition, pursuant to the Directive, listed companies will move away from shareblocking and adopt a record date.

Market Issues

The Polish State has owned significant stakes in some of the country's largest listed companies, and as such, the drive to develop a robust governance apparatus that would protect the interests of private shareholders has never been strong. Consequently, Poland has generally lacked a consistent system of disclosing comprehensive financial information and director/management information to shareholders in a timely fashion. Moreover, shareholder activism is virtually non-existent and shareholder associations in Poland are not nearly as influential as in other European markets.

We believe that companies' application of the recent Companies Code changes should serve as a good barometer of the progress made to enhance shareholders' rights in Poland. Moreover, as Poland further integrates itself into the EU community (i.e. complying with EU directives) and private investment increases (Poland intends to privatize about PLN 36.7 billion worth of its total shareholdings by 2011), there may be other opportunities to reform the market's corporate governance practices.

Election of Supervisory Board

In 2007, the Warsaw Stock Exchange issued new best practice recommendations calling for companies to have at least two independent directors on the board. However, we base our recommendations in accordance with the 2005 best practice recommendations that at least half the board be composed of independent directors, unless a shareholder owns more than 50% of the shares. We believe this higher standard of independence is more effective in protecting shareholder interests.

Because companies failed to disclose sufficient information on their board nominees in the past, we generally recommended shareholders abstain from election of directors proposals. However, as we anticipate companies will disclose more biographical information on their board nominees, we suspect we will be making more "for" and "against" recommendations in 2010 than in previous years.

Notable Issues

In October 2009, the European Commission referred Poland to the European Court of Justice with respect to the country's Act on Special Powers of the Treasury (the "Act"). According to the complaint, it states that the Act, which grants the State special veto power over certain key management decisions at 13 national companies of special importance, infringes on rules of the free movement of capital and the freedom of establishment, in violation of the EC Treaty.

Singapore

Regulatory Developments

Recent amendments to the Singapore Exchange's ("SGX") Listing Rules, which came into effect on March 1, 2008, introduced a watch list for SGX Main Board listed companies. Main Board listed companies with substantial concerns about their financial position will be placed on the watch list and put under strict market surveillance.

The SGX, in consultation with the Monetary Authority of Singapore ("MAS"), introduced several new measures to facilitate fundraising by way of equity offerings on February 20, 2009. The measures enables the issuance of 100% renounceable rights shares at a pro-rata basis to existing shareholders and the issuance of shares without preemptive rights at a discount of up to 20% of the market price, compared to a 50% limit for rights issues and 10% limit for discounts previously imposed. A number of companies have proposed to take advantage of this extended authority, which we have consistently opposed as we are concerned that these authorities grant the board too much discretion over the company's share capital.

The Companies Act is under review and a few enhancements have been proposed, including, among others, introducing multiple appointments of proxies to attend shareholder meetings and minority buy-out rights if minority shareholders are unhappy with the company structure. Additionally, MAS has proposed to require real estate investment trusts to hold annual shareholder meetings. However, the enforcement dates have not been worked out.

Market Issues

Singapore is considered to have one of the best corporate governance standards in place when compared to other Asian markets. However, as with many other Asian markets, transparency and disclosure remain major challenges that shareholders face. Many Singaporean companies fail to publish their annual report well in advance of shareholder meetings, creating a time constraint for international shareholders who wish to participate in the voting process. Additionally, disclosure of compensation plans, especially those concerning equity compensation, and auditor's remuneration is generally limited.

Election of Directors

As required under the Singapore Code of Corporate Governance ("Code"), Glass Lewis believes that at least one-third of the board should be independent and that listed companies must establish an independent-majority audit committee in which at least two of the members have relevant experience. The Code also recommends that listed companies establish remuneration and nominating committees which we believe should be majority independent. The remuneration committee should consist solely of non-executive directors, while insiders may serve on the nominating committee. Additionally, we believe that each of the audit, remuneration and nominating committees should be chaired by an independent non-executive director so as to ensure fair and objective oversight. We do not anticipate a substantial change to our board election policy with regards to companies in Singapore.

Compensation Issues

In Singapore, the compensation of each director is disclosed in a range, not in absolute figures. Executive directors are usually compensated with directors' fees, salaries, cash bonuses, equity incentives, benefits, and other allowances while non-executive directors are generally compensated with directors' fees. Although companies are required to disclose some details of director compensation and general compensation policy, the disclosure is generally minimal and lacks substantive information. Shareholders can vote on neither total compensation packages nor the compensation policy itself; rather, shareholders are asked to approve only the directors' fees payable to directors. In Singapore, there are no "say-on-pay" proposals common now in the U.S. and certain European markets.

In Singapore, companies routinely seek shareholder approval to grant the board authority to issue shares pursuant to equity-based compensation plans. Typically, however, details regarding the performance targets, including the method of evaluation and determination of performance are not disclosed, and the administrator of the plan is given considerable leeway in determining targets and evaluating the levels of achievement.

Notable Issues

Measures such as the issuance of up to 100% of the outstanding shares by way of renounceable rights issuances, and the issuance of shares at a discount of up to 20% have become prevalent amidst the global economic downturn, and we will continue to closely monitor these practices. Board independence and disclosure likely will continue to be central issues during the 2010 proxy season and we will apply particular scrutiny to related party transactions. We also believe that shareholders will experience continued difficulty in making informed voting decisions due to the high concentration of meetings at one time and occasional late filings in Singapore.

Spain

Regulatory Developments

There have been no major regulatory developments in Spain regarding corporate governance since 2006. Recently, the Government of Spain introduced a draft bill titled “The Sustainable Economy Law.” The bill calls for a mandatory advisory vote on the remuneration report that companies publish regarding their executive remuneration policy. The Ministry of the Treasury and Economy will be responsible for determining the form and content of the report. Further, the definition of independence as it applies to directors will be formalized. As the proposed reform is in its initial stages, it is uncertain whether the proposed changes will be in effect by the 2010 proxy season.

Market Issues

The Spanish blue chip index, the IBEX 35, continues to feature a high concentration of capital. Nearly one third of its constituents are controlled companies owned and operated by Spanish families. These companies often feature a combined chairman and CEO position and a majority of non-independent committee members.

Election of Directors

The election of directors in Spain is primarily carried out on an individual basis. However, some companies continue to put forward the election as a slate of directors. Glass Lewis will no longer support a slate when we have concerns regarding one or more directors. We also feel that Spanish best practices regarding committee independence fall short of international best practices by only requiring an independent chairman of each board committee. Glass Lewis believes that board committees should be majority independent and wholly non-executive.

Compensation Issues

Fewer constituents of the IBEX 35 put forth a non-binding proposal on executive remuneration in 2009 than in 2008. Glass Lewis will recommend voting against the reelection of the chair of the nominating and compensation committee when the board fails to put forth the approval of the remuneration report to shareholders. The disclosure of each company’s executive remuneration policy varied greatly from company to company making it difficult to make cross-company comparisons. The majority of Spanish companies’ reports were boilerplate while Banco Santander’s remained the benchmark.

Sweden

Regulatory Developments

Swedish corporate governance is primarily regulated by the Swedish Code of Corporate Governance (“the Code”) and the Companies Act. The Code provides recommendations for good corporate governance practices, whereby publicly listed companies must comply with the Code or explain the reasoning for any departure from the recommendations (so called “comply or explain” provisions). On October 27, 2009, the Swedish corporate governance board announced proposed changes to the Code, which will, after the final version is approved, include new recommendations regarding executive pay in listed companies. In addition, some recommendations regarding audit committees of the board of directors, financial reporting and internal controls have been removed from the Code, as these recommendations are superseded by existing legislation.

Market Issues

Many Swedish public companies are controlled by a shareholder through dual class stock. In fact, we estimate that 55% of all Swedish public companies use a dual class share structure. The ratio of voting rights between different classes of shares is usually 1:10, whereby one class of shares holds ten times as many votes as the other class. This has led to unusually stable ownership structures in Sweden, where major shareholders play an active role in the management of the company, both through engagement and by serving as directors. Furthermore, instead of having a nominating committee composed of board members, which is the prevailing international practice, the Swedish governance structure requires a committee composed of shareholder representatives, who may or may not be directors, appointed by the three to five largest shareholders. The committee nominates directors and auditors, and suggests procedure for their compensation at the annual general meeting. Glass Lewis generally approves nominating committees that comply with the Code, and that have fulfilled their duty in nominating candidates who are qualified to serve on the board.

Election of Directors

The Swedish Companies Act provides that directors are elected through plurality voting. Since there are rarely more director nominees than board seats, directors are virtually guaranteed election as they need only a single vote in favor of the nominee. While we believe that the board more accurately represents shareholders’ interests when directors are elected by a majority vote of shareholders, the plurality vote standard is mandatory under Swedish law, making the election of directors by majority vote impossible.

When the number of board nominees does not exceed the number of board seats open during an election, in accordance with the plurality standard, the chairman will simply put forth the resolution to elect directors as a slate, rather than conduct elections individually. Though shareholders who are physically present at a meeting are able to vote on candidates separately if they so request, shareholders voting by proxy are unable to do so.

Our independence requirements, which are in line with Swedish best practices as outlined in the Code, state that a majority of directors should be independent of the company and its senior management, and at least two directors should be independent of major shareholders. However, we believe that the composition of the board should generally reflect a company’s shareholder structure. Swedish companies are required to disclose the affiliations of all directors and nominees, and either comply with the Code or explain the reasons for not doing so. As for board committees, large Swedish public companies generally have an audit committee and often also a compensation committee. In smaller companies, the board as a whole often performs the function of these committees. Glass Lewis’s independence requirements state that the entire audit committee must be independent of the company and that at least one member must be independent of major shareholders. The most common issue with independence requirements not being met is in cases where the CEO serves as a director, and the company has not established a separate board committee. We expect this issue to persist in smaller companies, even as larger companies move towards more independent directors and increasing adherence to international corporate governance standards.

Compensation Issues

Swedish law requires that shareholders approve a company's compensation policy in a binding vote. Furthermore, long-term incentive plans need to be approved by a 90% majority of shareholders. The proposed changes to the Code are based on EU Recommendation 2009/3177/EC regarding remuneration of directors of listed companies. The amendments to the Code introduce the following recommendations relating to compensation: (i) a cap on variable compensation as a percentage of total compensation; (ii) predetermined and measurable performance targets, aimed at promoting a company's long term value creation; (iii) a cap on severance payments equal to two years' total compensation; (iv) a minimum vesting period of three years for share-related compensation; and (v) increased disclosure and transparency regarding all variable compensation. Unlike in many other markets, directors of Swedish listed companies should not participate in equity compensation plans. Furthermore, the proposed changes include recommendations on increased disclosure regarding variable compensation. We expect many companies to revise their compensation policies for executives and to make incentive plans more transparent, increasing shareholders' ability to scrutinize and influence companies' compensation practices.

New Proxy Paper Features

Since 2008, Glass Lewis has provided a page in its Proxy Papers for Sweden with an overview of executive and director compensation, where such information is available. Our 2010 Proxy Papers for Sweden will include a revised and improved version of this page, which will summarize executive and director compensation amounts for the past fiscal year and compare these amounts to the company's peers, where the data is available. As a result, we will be able to provide more specific analysis of relevant compensation issues in our analysis of "say on pay" proposals and elections of board members.

Switzerland

Regulatory Developments

Swiss corporate governance practices are primarily regulated by the non-binding Swiss Code of Best Practice for Corporate Governance ("CG Code") and the legally-binding Swiss Code of Obligations ("CO"). The CG Code, first published in 2002, was most recently amended in 2008 with the addition of an appendix. A supplementary Directive on Information Relating to Corporate Governance ("CG Directive"), the most recent version of which entered into force in July 2009, sets out additional comply-or-explain provisions regarding disclosure of information related to the board, management, share capital, and shareholders' rights. We do not expect that any of the recent changes to the CG Directive or Swiss law will have a substantial impact on shareholders' rights during the 2010 proxy season.

Market Issues

Switzerland has generally been regarded as a corporate governance leader in Europe. Swiss corporate governance recommendations and requirements have remained relatively unchanged since the first CG Code was released in 2002. A large majority of Swiss companies have followed most of the CG Code's recommendations and many companies have actually exceeded them in practice. Nevertheless, there are two issues that have frustrated international shareholders' efforts to become active voting participants in Swiss general meetings: (i) the inconsistent use of shareblocking and share re-registration requirements, which vary between sub-custodians; and (ii) absolute caps on voting rights and other voting restrictions. We do not expect there to be any changes to these voting impediments during the 2010 proxy season.

Election of Directors

By law, Swiss companies are governed by a one-tier board that can be comprised of both executive and non-executive directors. Some Swiss companies voluntarily separate the roles of management and management

oversight by only nominating non-executive members to the board—in effect, creating a two-tier board system. Nevertheless, the role of executives on Swiss boards has been controversial in some cases. In particular, the separation of the roles of chairman and CEO has become a key governance issue for investors in Switzerland in recent years. While many Swiss companies have moved away from the combined CEO/chairman role, mirroring a general European trend, several companies maintain a unified position. In general, Glass Lewis supports the separation of these roles, as we believe that separating the roles of corporate officer and chairman creates a better governance structure to protect shareholder interests. During the 2010 proxy season, at least one company, Novartis AG, will have a shareholder proposal on the agenda requesting the separation of the roles of chairman and CEO.

Compensation Issues

Executive compensation has become the focal governance concern in Switzerland as a consequence of the global financial crisis. Several leading Swiss companies, and in particular UBS AG, were highly criticized for their high executive bonus payouts despite poor company performance.

Appendix 1 of the CG Code, published in February 2008, recommends that companies involve shareholders in setting executive compensation policy through dialogue or an advisory vote at the annual meeting. With mounting concern over poor compensation practices, a number of companies included a so-called “say on pay” proposal on the agendas of their 2009 annual meetings. At least four of these proposals (UBS AG, Credit Suisse AG, Nestlé SA and ABB Ltd.) were motivated by shareholder proposals, while one company, Novartis AG, rejected the shareholder request to include a “say on pay” proposal on the agenda. For the 2010 proxy season, shareholder proposals calling for “say on pay” have been submitted to Novartis, Holcim Ltd, Swiss Re and Zurich Financial Services. Because shareholders and the general public continue to press for greater corporate accountability with regard to pay practices, we expect that the number of companies offering advisory votes on compensation policy will increase in 2010.

“Say on pay” may take an even more prominent role in Switzerland as Swiss lawmakers and citizens debate the merits of introducing mandatory votes on compensation at all public companies. A citizens’ initiative that may be up for a general vote in 2010, the “Minder Initiative,” would require all companies to introduce binding votes on executive compensation policy. The initiative, as currently worded, would also ban severance payments and any special payments resulting from M&A activity. While the Minder Initiative may enjoy broad support among Swiss voters, *economiesuisse*, the organization of Swiss businesses and economic associations that published the CG Code, has recently warned that the initiative would hurt Switzerland’s economic competitiveness. Swiss lawmakers, spurred by such warnings, are currently working on a counterproposal to the Minder Initiative that might require advisory votes on executive compensation policy at public companies in Switzerland. The timeline for implementation of any such requirement remains unclear at this stage.

Swiss regulatory authorities have already taken definitive action to monitor and refine executive compensation practices at large companies in the financial sector. The Financial Markets Supervisory Authority (“FINMA”) issued a circular in November 2009 that takes effect January 1, 2010 and applies to the country’s seven largest banks and five largest insurance providers. The circular brings executive compensation policies of these companies under FINMA’s direct supervision. These companies will be required to practice greater transparency with regard to compensation practices and to demonstrate that variable compensation is adequately aligned with the companies’ long-term performance, that compensation policies do not encourage excessive risk-taking, and that compensation is accounted for in liquidity planning.

Notable Issues

As noted above, we expect that executive compensation will be the primary governance issue in Switzerland in 2010. Given the developing nature of compensation-related regulations, shareholders’ ability to influence compensation policies may change dramatically during or after the 2010 proxy season.

New Proxy Paper Features

Our 2010 Proxy Papers for Switzerland will include a page that summarizes executive and board compensation amounts for the past fiscal year and compares these amounts to the company's peers, where the data is available. As a result, we will be able to provide more detailed analysis of relevant compensation issues in our analysis of "say on pay" proposals and elections of directors.

Taiwan

Regulatory Developments

Taiwanese corporate governance practices have recently shown meaningful and continued signs of improvement. Although a vast majority of Taiwanese companies maintain the traditional two-tier board structure whereby insiders and affiliates dominate, the recently revised Securities and Exchange Act aims to strengthen shareholder protection through an increase in the number of independent directors on the board. Additionally, because supervisors in Taiwan have long been criticized as not being able to effectively perform their monitoring function, the revised securities law is looking anew at the audit committee as an alternative mechanism by which to rectify the problems from lack of oversight. Pursuant to the new law, a company will establish either an audit committee or a board of supervisors. The audit committee shall be composed of no less than three members, all of whom are independent.

Furthermore, Article 6 of the Regulations Governing Content and Supplemental Requirements for Shareholder Meetings Handbook of Public Companies was amended so that full meeting handbooks and all supplementary materials will be disclosed on designated websites 15 days prior to both annual and special meetings.

Market Issues

Taiwan's corporate governance structure, though improving steadily, continues to exhibit problems with corporate opacity through limited information disclosure, a failure to defend minority shareholder interests, a systemically weak internal control system, including a lack of oversight, and a perennial struggle with questionable business ethics.

Election of Directors

Listed Taiwanese companies are governed by a two-tier board structure consisting of the board of directors and the board of supervisors. A board of directors typically comprises executive and non-executive directors with little or no independent representation. The majority of Taiwanese companies elect directors and supervisors as a slate. Pursuant to the Listing Rules, the board of directors should be comprised of at least five members, at least two of whom should be independent. Also, as a result of amendments to the Taiwan's Securities and Exchange Act ("the Act") in 2006, beginning in January 2007, publicly listed companies may appoint independent directors in accordance with the company's articles of incorporation.

In the event that a company voluntarily provides for the appointment of independent directors in its articles, not less than two in number and not less than one-fifth of the total number of directors shall be independent. In addition, at least one of the elected independent directors should be a professional in accounting or finance. The Corporate Governance Best-Practice for TSE/GTSM Listed Companies recommends establishing committees such as the audit committee, nominating committee and compensation committee. Although very few Taiwanese companies have adopted the committee system as yet, for companies that adopt the committee system, we are firmly committed to the belief that a majority of independent directors should serve on each of the audit, compensation and nominating committees.

A vast majority of Taiwanese companies have a traditional two-tier board structure in place and an overwhelming number of boards do not have any independent directors on the board. Given this common practice in Taiwan whereby the board is dominated by insiders and affiliates, we believe companies should be

afforded sufficient time to meet the new standards of independence under the Act. Therefore, we declined to make voting recommendations based on strict notions of independence during the past proxy season. This, as has historically been the case, resulted in a large number of “FOR” recommendations for directors where the information for nominees was disclosed by the company. However, we started to recommend voting against directors in the 2009 proxy season when the company failed to appoint a sufficient number of independent directors in accordance with the Act and the listing rules. We will continue with this policy in the coming season.

Additionally, the Company Law allows institutional or government shareholders or business affiliates to appoint their representatives as directors and supervisors. We believe that having representatives of the same institutional shareholder or business affiliates acting concurrently as director and supervisor greatly weakens the fundamental function of supervisors.

Compensation Issues

In Taiwan, most companies do not disclose compensation of directors and/or supervisors. In addition, the absence of solid accounting and the prevalence of information asymmetries boosts management’s autonomy in this matter. Most listed companies employ a system of compensation for management that includes a fixed base salary as well as an annual bonus system. In addition, it is common for Taiwanese companies to allocate stock bonuses to its executives and employees. We expect to see the organic development of a fair incentive mechanism and a transparent disclosure system for management’s compensation begin to develop in Taiwan.

Private Placement

In Taiwan, it is common for companies to raise funds through private placement. However, many companies issue new shares without preemptive rights to specified investors at an excessive discount. In our view, the issuance of new shares at an excessive discount may threaten shareholder value. As such, we will usually apply tighter restrictions on dilutive private placements with discounts. This may result in a large number of “AGAINST” recommendations for such proposals.

Conflict of Interest

As Article 209 of the Taiwanese Company Law states that shareholders must approve of the essential contents of any acts committed by a director, for himself or on behalf of another person, that fall within the scope of the company’s business, many Taiwanese companies seek shareholder approval to release the board of directors from such restrictions. Under most circumstances, we usually recommend voting against such proposals for the reason that we believe it may cause a conflict of interest for the directors.

Notable Issues

Despite increased signs of improvement in the landscape of corporate governance in Taiwan, issues such as continuing limited disclosure, insufficient number of independent directors and supervisors, protection of minority shareholder rights, weak internal controls, lax oversight, questionable business ethics and a disregard of shareholder value have demonstrated continued weaknesses in the underlying structure of Taiwan’s corporate governance systems.

In the upcoming proxy season, we will closely monitor these ongoing issues and encourage improvements in corporate governance in general, and in the fields of transparency and protection of shareholder rights in particular.

United Kingdom

Regulatory Developments

In response to the global credit crisis and the corresponding effect on UK companies, the Financial Reporting Council's ("FRC") review of the Combined Code, which was originally scheduled for completion in 2010, was brought forward in March 2009. The review focused on: (i) the duties and responsibilities of chairmen and non-executive directors; (ii) the quantum value of executive remuneration and the corresponding alignment with shareholders' interests; and (iii) the potential implementation of annual director elections. Please see "Election of Directors" and "Compensation Issues" for more information.

We note that the FRC will now refer to the Combined Code as the "UK Corporate Governance Code" in order to make the Code's status as the UK's recognized corporate governance standard clearer to foreign investors and foreign companies listed in the UK. The revised Code will apply to accounting periods beginning on or after June 29, 2010.

An additional significant development in 2009 was the EU Shareholder Rights Directive, which sought to improve shareholders' rights in the wake of the significant losses experienced by many shareholders as a result of the crisis. Approved in August 2009, the Directive expands minority shareholder rights by reducing the level of ownership required to call a general meeting from 10% to 5% of issued share capital. The Directive also allows for the shortening of a company's general meeting notice period from 21 to 14 days, subject to annual shareholder approval. Although the shortened period is contingent upon a company having adequate electronic voting and communication provisions in place, Glass Lewis has recommended and will continue to recommend voting against any proposal that seeks to reduce the notice period, as we believe 14 days is insufficient time for shareholders to weigh the extraordinary issues generally presented at a general meeting and make a fully informed decision.

Market Issues

The FSA intends to introduce a revised Listing Regime sometime during 2010 that will change the requirements for many foreign-listed companies. The Regime, which creates a new type of listing for the UK Official List, will comprise two segments: (i) a Premium Listing that meets more stringent super-equivalent requirements; and (ii) a Standard Listing that meets EU-minimum standards. These segments will further be subdivided into listing categories according to the characteristics of each security and the type of entity issuing them.

The new Listing Regime is expected to strengthen the corporate governance standards for Premium Listed overseas companies by requiring them to 'comply or explain' with the Code and requiring Standard Listed overseas companies to comply with the EU Company Reporting Directive. We intend to closely examine and review these market changes in the coming year, and may adapt our governance standards accordingly.

Election of Directors

In the wake of the problems of the financial sector, there have been calls for the compulsory annual election of directors on the basis it would increase director accountability and potentially safeguard shareholders from experiencing similar losses in the future. The Code currently recommends that all directors should be subject to reelection at least every three years, except for non-executive directors who have served for more than nine years, which should be subject to reelection every year. The FRC's revised Code proposes that either all directors stand for election annually or that only the chairman stand for election annually. In addition to allowing for greater accountability, Glass Lewis favors the annual election of directors, as we believe it provides shareholders with the opportunity to voice any concerns and hold directors accountable in a more timely manner.

On May 14, 2009, the House of Commons Treasury Committee issued a report examining corporate governance practices in the banking sector. The report concluded that non-executives do not commit enough

time to their roles, with many combining senior full-time positions with multiple non-executive directorships. We note that the FRC will introduce a new principle as part of the revised Code that all directors must be able to allocate sufficient time to their position as non-executive director in order to effectively fulfill their responsibilities. While the FRC has not disclosed minimum time commitment requirements, Glass Lewis will maintain recommending voting against directors who are overcommitted based on the notion that it may preclude them from fulfilling their responsibilities to a company's shareholders. We consider a director who serves as an executive of any public company while serving on more than two other public company boards and any other director who serves on more than six public company boards to be overcommitted. We also believe that the role of chairman is particularly time consuming; thus, we expect a chairman of any public company to reduce his external commitments appropriately. We will continue to scrutinise a director's executive duties and outside board memberships going forward.

Compensation Issues

Investors were first presented with an advisory vote on executive remuneration during the 2003 UK proxy season. Our policies and guidelines have been evaluated and revised annually, resulting in a steady increase in "AGAINST" vote recommendations each year. During the past year, however, the proportion of remuneration reports we recommended voting against decreased slightly from 22% to 21% of our UK coverage universe. Although difficult to gauge, we do not expect the proportion of recommendations against remuneration reports to increase significantly in the coming year, as we believe many remuneration committees will be under significantly more shareholder pressure than in previous years to more closely align remuneration policies with shareholder interests and to ensure that quantum levels of both fixed and variable pay are prudently awarded.

Throughout the year, excessive risk-taking in the financial services industry and a corresponding lack of sufficient oversight has greatly contributed to near collapse of the UK banking sector. Remuneration practices such as rewarding executives for achieving short-term goals through potentially excessive risk taking have been counterintuitive to sound risk management and long-term value creation. As a result, there has been considerable media scrutiny of executive pay packages and calls from taxpayers and institutional investors alike to reign in excessive risk taking and outsized remuneration.

In April 2009, the European Commission ("EC") announced the adoption of new guidelines for director remuneration. The EC guidelines highlight several key principles, including that: (i) variable pay should be subject to predetermined limits and fixed pay should be large enough for a company to withdraw variable pay where performance criteria are not met; (ii) performance criteria should promote the long-term sustainability of the company and include non-financial criteria that are relevant to the company's long-term value creation; (iii) clawback provisions should exist in certain cases; and (iv) termination payments should be restricted and not paid in the case of poor performance. Member States were invited to take the necessary measures to promote the application of the EC guidelines by December 31, 2009.

In addition, the FRC's revised Code will include a provision whereby remuneration incentives should be compatible with risk policies and systems, and criteria for paying bonuses should be risk adjusted. Further, consideration should be given to the use of provisions that permit the company to reclaim variable components in exceptional circumstances of misstatement and misconduct.

In 2010, Glass Lewis expects that the issues surrounding executive remuneration will continue to be closely scrutinised. In general, our analysis on executive compensation focuses on the overall disclosure and remuneration structure and the level of variable and fixed compensation paid to executive and non-executive directors. In light of the proposed new remuneration, we will continue to be critical of these key aspects and may consider the extent to which companies comply with new legislation such as the EC guidelines for directors' remuneration.

Notable Issues:

In September 2009, Barclays, HSBC, Lloyds Banking Group, Royal Bank of Scotland and Standard Chartered

pledged to support the G20's new rules and restrictions on bonus awards. The rules state that: (i) bonuses will be subject to a clawback mechanism; (ii) any bonus for senior executives working in high risk positions must be deferred for three years, with at least 50% of the payment made in shares or linked instruments; and (iii) more thorough disclosure will be required on remuneration policies and practices.

Further, in December 2009, Chancellor Alistair Darling announced the introduction of a new one-time tax of 50% on bonus payouts over £25,000 to be paid not by the recipient but by the respective company. The goal of the tax, as stated by Mr. Darling, is to encourage banks to retain capital rather than pay it out as bonuses. Further, he said that the tax may force banks to change their pay culture to avoid encouraging the risky behavior that helped trigger the global credit crisis. As expected, in response to the tax, banks are worried about losing employees to U.S. and other European firms if remuneration levels are not sufficiently competitive. The media has recently publicized that bankers are trying to avoid the tax bill by increasing base salary in return for decreasing variable compensation, by reclassifying a banker as a "consultant" and by allocating at least two year's worth of bonuses before the bill is enforced.

Glass Lewis will continue to monitor the developments of the G20 bonus reforms and proposed bonus tax going forward.

New Proxy Paper Features

In late 2009, Glass Lewis implemented a more clear and concise presentation of the proxy voting results from the previous year's annual general meeting. The new format provides a percentage of votes cast as well as our corresponding vote recommendation for each proposal. This feature will be displayed for companies listed in the FTSE 350.

United States

Regulatory Developments:

A. Legislative Reform

With many of the numerous legislative and regulatory proposals discussed in 2009 being subject to further debate, public companies and shareholders alike are uncertain as to the impact of such proposals on the 2010 proxy season. Consequently, we believe that shareholders should be aware of some of the terms of these reform bills.

On December 10, 2009, the House of Representatives passed the Wall Street Reform and Consumer Protection Act, which is currently pending a vote in the Senate. The Act consolidates and revises numerous reform bills that were introduced in the House this fall. Proposed legislation from the Senate is also being discussed. The Senate Banking Committee is currently examining the "Restoring American Financial Stability Act of 2009," introduced by Senator Christopher Dodd on November 11, 2009. Should Dodd's bill pass, the houses of Congress would have to resolve any conflicting provisions before legislation is enacted.

Notably, the House bill mandates an advisory vote on executive compensation, which was previously provided under the "Corporate and Financial Institution Compensation Fairness Act of 2009," as discussed in more detail below. It also contains provisions consistent with the "Investor Protection Act," including those authorizing the SEC adopt a proxy access rule. Further, like the "Investor Protection Act," the new reform bill exempts companies with a market cap of less than \$75 million and non-accelerated filers from compliance with Sarbanes-Oxley internal controls, lessening the SECs regulatory powers over small issuers. The bill creates several federal agencies responsible for the oversight of consumer products and services and the regulation of large financial firms. As part of the new regulation, in an attempt to protect taxpayers, the bill also dismantles the "Too Big to Fail" policy, effectively ending bailouts and providing for a procedure to demolish large failing financial institutions.

Dodd's proposed legislation more directly mandates corporate governance reform, including provisions such

as required shareholder proxy access, a mandatory annual shareholder vote on executive compensation, and a mandatory vote on any policy relating to payments to executives upon merger or acquisition transactions. Other executive compensation reforms include required disclosure of five-year histories of company performance compared to executive pay, clawback policies relating to restatements, and disclosure of employee hedging. The bill also provides more stringent compensation standards for bank holding companies and higher capital charges for banks with risky compensation policies.

Many of Dodd's proposals are similar to Senator Charles Schumer's "Shareholder Bill of Rights," introduced on May 19, 2009. Schumer's bill also includes provisions requiring an independent chairman of the board, proxy access, majority voting in director elections, elimination of classified boards, an advisory vote on executive compensation, and the creation of a risk committee on the board of directors.

B. Potential Say-on-Pay Legislation

In 2009, U.S. government officials introduced numerous proposals mandating an advisory vote on executive compensation and financial institutions receiving federal funds complied with certain restrictions on executive compensation that required such a non-binding vote.

As part of the new regulatory framework enacted in response to the global financial crisis, the U.S. Congress enacted legislation that required any company that receives financial assistance from the U.S. Treasury through the Troubled Asset Relief Program to submit a non-binding advisory vote on executive compensation to its shareholders. This requirement, applicable to approximately 280 public companies, remains in effect as long as any obligation arising from financial assistance provided under TARP remains outstanding.

In addition, the U.S. Treasury Department and the houses of the U.S. Congress recently proposed federal regulation that would mandate an advisory vote on executive compensation. In May 2009, Senator Charles Schumer introduced the "Shareholder Bill of Rights Act of 2009." As discussed above, an advisory vote on executive compensation at all U.S. public companies is one of six key provisions. In June 2009, the U.S. Treasury Department issued its proposal, the "Investor Protection Act of 2009." The same month, Representative Barney Frank introduced the House bill, the "Corporate and Financial Institution Compensation Fairness Act of 2009," which was subsequently incorporated into the "Wall Street Reform and Consumer Protection Act of 2009."

The House bill contains several key substantive components other than a say-on-pay vote, including a non-binding advisory vote on golden parachutes in the context of a change-in-control transaction, independence standards for compensation committees and compensation consultants, and disclosures by certain financial institutions regarding incentive-based compensation and a prohibition on compensation arrangements that encourage inappropriate risk-taking.

While the outcome of these proposals is uncertain, the legislation is unlikely to be applicable during the 2010 proxy season.

C. SEC Adopts New Rules to Enhance Disclosure Regarding Risk, Compensation and Corporate Governance

In July 2009, the SEC issued a release that proposed amendments to its rules to enhance proxy disclosure regarding director qualifications, the board leadership structure and its role in risk management, and executive compensation policies in light of recent market turmoil. The revisions are intended to increase shareholders' ability to make informed voting and investment decisions. At its December 16, 2009 meeting, the Commission adopted these new rules, which will be effective on February 28, 2010.

The adopted rules require disclosure of additional information about how a company's compensation policies and practices create incentives that encourage excessive or unnecessary risk-taking by employees. This disclosure is required in circumstances where the risks arising from the policies are reasonably likely to have a material adverse effect on the company. It will not be a part of the Compensation Discussion and Analysis, but rather will be a separate compensation-related disclosure.

The Commission approved amendments that require more information about the background and qualifications of directors and nominees. In particular, the adopted rules require disclosure regarding the

qualifications, experience or skills that qualify an individual to serve as a director of the company, as well as disclosure of any public company directorships held by each director or nominee for the past five years and any legal proceedings involving a director or nominee for the past ten years. The final rules also require a company to disclose whether the nominating committee considers diversity in identifying nominees for directors, and to assess how the board implemented any diversity policy.

In addition, the new rules require a company to elaborate on: (i) the board leadership structure, including whether the company separates the role of the chairman and CEO, and why it is the most effective structure for the company at the time of the filing; and (ii) the board's role in the company's risk management process, including whether and how the board or its committees monitor risk.

Another amendment requires companies to disclose the fees paid to their compensation consultants, along with the nature and fees for any other services the consultant provides that are not related to executive or director compensation, in order to allow investors to better determine the independence of a company's compensation consultant.

The adopted rules also require companies to disclose the "fair value" of stock and option awards granted during the fiscal year, rather than the dollar amounts determined for financial statement reporting purposes. Additionally, the amendments require companies to disclose shareholder vote results within four business days after the meeting at which the vote occurred.

D. Shareholder Proxy Access

While a proxy access rule will likely not be in place in time for the 2010 proxy season, we believe that investors and shareholders should be aware of recent developments regarding this issue.

On June 10, 2009, the SEC released proposed Rule 14a-11, which, if adopted, would require most public companies to include shareholder nominees for directors in company proxy materials under certain circumstances. Pursuant to the rule, a shareholder or group of shareholders seeking to nominate directors would need to have beneficially owned shares in a company for at least one year. The ownership threshold would be based on a sliding scale depending on the company's size: 1% of the voting shares for large accelerated filers; 3% of the voting shares for accelerated filers; and 5% of the voting shares for non-accelerated filers. Nominating shareholders must file a Schedule 14N reporting the percentage of shares owned, the holding period of such shares, the intent to hold the shares through the date of the shareholder meeting, and certifying that the nomination is not an attempt to change control of the company. The maximum number of shareholder nominees a company would be required to place in its proxy materials would be equal to the greater of one nominee or 25% of the board.

Since the release of proposed Rule 14a-11, the SEC has reviewed over 500 public comment letters regarding the rule. While supporters generally view the proxy access rule as an effective shareholder mechanism to insert new perspectives onto the board, opponents argue that the proposed rule may lead to a greater number of costly, disruptive and time-consuming contested director elections. The SEC has deferred voting on the proposed rule until early 2010 so it can have more time to review the comment letters. In the meantime, on November 4, 2009, the House Financial Services Committee approved, by a vote of 39-30, an amendment to the Investor Protection Act of 2009 that affirmed the SEC's ability to adopt proxy access rules.

E. Delaware Legislation

In April 2008, the Delaware General Assembly adopted amendments to the Delaware General Corporation Law ("DGCL"). These amendments became effective on August 1, 2009. The amendments authorize, but do not require, a company to adopt bylaw procedures providing shareholders proxy access. The amendment provides a nonexclusive list of procedures that are permissible, including establishing minimum share ownership requirements for a shareholder to be eligible to include nominees in a company's proxy statement.

In addition, the DGCL amendments include provisions that allow a company to adopt bylaw provisions that require reimbursement of reasonable expenses incurred by shareholders, subject to certain conditions. This amendment effectively codifies the Delaware Supreme Court's decision in *CA, Inc. v. AFSCME Employees*

Pension Plan, 953 A.2d 227 (Del. 2008) validating the concept of “short slate reimbursement” bylaw provisions.

The statutory amendments also modify the DGCL provisions regarding director indemnification and advancement of expenses. Specifically, under the amended DGCL, a company cannot amend its certificate of incorporation to eliminate or impair a director’s right to indemnification or advancement of expenses for claims relating to actions taken before the amendment unless the charter specifically authorizes its elimination or impairment.

Finally, the DGCL amendments include provisions intended to address concerns about the effects of “empty voting,” which occurs when shareholders acquire voting rights without a comparable economic interest in the company.

Market Issues

As the U.S. Treasury’s TARP Program advances to 2010, many of the participating financial institutions will seek to pay back the government and in turn, shed the “scarlet letter” which has grown to symbolize the massive bailout at the expense of U.S. taxpayers. Notably, ten of the largest participants, American Express, Bank of New York Mellon, BB&T Corp., Capital One Financial Corp., Goldman Sachs Group, JPMorgan Chase, Morgan Stanley, Northern Trust, State Street and U.S. Bancorp, repaid their TARP funds in June 2009. More recently, Bank of America, one of the two banks receiving “exceptional” assistance, repaid the total \$45 billion in funds it owed the U.S. Treasury on December 9, 2009 in order to shed the executive compensation regulations in light of its CEO search. Similarly, on December 14, 2009, both Citigroup and Wells Fargo announced their plans to repay the government by year end.

The remaining high profile companies yet to pay back the government include AIG, Chrysler, General Motors, GMAC and PNC Financial. Although on December 15, 2009, General Motors announced plans to repay the government by June 2010. Overall, approximately 34 out of the 690 financial institutions have paid back their TARP funds and approximately 27 banks receiving funds have failed or are in danger of failing. In December 2009, the faster-than-expected repayments triggered the U.S. Treasury to estimate that it would lose only \$42 billion in 2009 and up to a maximum of \$141 billion over 10 years, a much smaller figure than originally anticipated.

While companies that have yet to pay back their TARP funds still remain under certain executive compensation limitations, seven companies receiving the most bailout funding are party to additional restrictions under Kenneth R. Feinberg, who was appointed “pay czar” by the Obama administration in June 2009. In his capacity, on December 11, 2009, Mr. Feinberg set \$500,000 salary limits for employees at Citigroup, AIG, General Motors and GMAC, each of which received “exceptional” bailout funds. Chrysler and Chrysler Financial, which are also under Mr. Feinberg’s jurisdiction, were not affected; as none of their employees met the \$500,000 threshold. Significantly, Mr. Feinberg will allow AIG to pay retention bonuses to executives after U.S. regulators emphasized the need to keep the staff. Mr. Feinberg has publicly stressed that bonuses and other incentives should only be paid when firms achieve performance goals, and a majority of total pay should be held over three years.

Election of Directors

Aside from evaluating routine matters of corporate governance—director independence, related party transaction disclosure, key committee performance, etc.—Glass Lewis maintains a highly nuanced approach when reviewing more complicated director matters. Most recently, the global financial crisis of 2008/2009 has engendered a new focus on board-level risk management and a high level of scrutiny of directors whose companies received government support and funds including via the Troubled Asset Relief Program (“TARP”).

While U.S. financial institutions enter the post-TARP-era, our review and criticism of such companies and their directors will remain focused and pointed. Given their need to rely on public funds, we question the oversight provided by directors at such companies, particularly in the area of risk management. As such, we believe it is important to review the steps boards have taken to maintain robust risk oversight and mitigate financial losses

that may have necessitated the need for companies' to rely on public funds. We believe shareholders should reasonably expect public boards to have comprehensible, effective risk mitigation policies in place. Consistent with our stance in 2009, in instances where a board or committee that is charged with risk oversight duties fails to mitigate such risk, thereby resulting in large losses at a company, we believe shareholders should hold those directors responsible for failing to properly execute that oversight, especially in cases where a pattern of poor oversight exists. In severe cases, we will broaden this policy and recommend that shareholders vote against specific directors at other public company boards where they serve, especially if the director served on the board of a firm that faced bankruptcy or dissolution.

When evaluating director performance at companies receiving government assistance, we consider a number of factors, including whether the company's participation in the Capital Purchase Program was voluntary and whether the company has repaid or has developed a plan to repay the government. We will also look at the company's pay-for-performance grade and any substantive changes made to the existing executive compensation programs, either to make their executive pay practices consistent with the restrictions and obligations associated with the company's participation in the TARP or to address concerns of unearned performance bonus awards.

In addition, considering that the SEC may soon require companies to provide additional disclosure about the board's involvement in the company's risk management process, we will review such disclosure and note any concerns when applicable. These proposed rules regarding enterprise risk management programs and policies are expected to go into effect in 2010.

Beyond broader issues such as TARP, Glass Lewis maintains an especially nuanced approach when reviewing individual director performance at companies subject to intense scrutiny. In addition to firms that receive government bailouts, this category includes companies that are plagued by financial restatements, maintain patterns of egregious compensation practices, or are subject to other questionable issues. When applicable, we evaluate whether individual directors may be responsible for such oversight failures and poor governance practices.

During the 2009 proxy season, we frequently recommended that shareholders vote against directors who previously served on boards of firms such as Freddie Mac, Fannie Mae, Citigroup and Lehman Brothers, among other companies, based on specific instances of failed oversight. In cases where directors at these companies served on the compensation, audit or risk committees during periods of excessive executive compensation payouts and failures in risk oversight, respectively, we maintained that their continued service on any public company board was not in the best interest of shareholders.

During the upcoming proxy season, we will continue to scrutinize director performance at struggling firms and may recommend voting against certain directors whom we have historically taken issue with if they remain on other boards and/or on key board committees. For example, a director whom we deem to be a habitual overpayer based on multiple cases of questionable oversight may very well receive an against vote recommendation from us for service on a compensation committee at a company with reasonable pay practices. We believe that if a director has repeatedly shown failed oversight in a particular area at multiple companies, shareholders would be well served to question such director's role at even a non-related company.

Compensation Issues

A. Speech by SEC Staff Regarding Executive Compensation Disclosure

As executive compensation remains a focus of the investor community, the SEC continues to scrutinize the compensation disclosure of public companies. In a speech on November 9, 2009, at the SEC's Annual Proxy Disclosure Conference, Shelley Parratt, deputy director of the SEC's Division of Corporate Finance, offered feedback on executive compensation disclosure in 2009 and insight into what the Commission expects in reviewing companies' executive compensation disclosure in 2010.

Ms. Parratt encouraged companies to improve their executive compensation disclosure in two key areas: (i) add more analysis to the Compensation Discussion and Analysis ("CD&A"); and (ii) disclose performance

targets. In emphasizing the need for further analysis, Ms. Parratt stated that companies should explain “how” and “why” executive compensation decisions were made.

She also addressed the disclosure requirements with regard to performance targets. In particular, she noted the SEC requires a company to disclose performance targets that are material to its compensation policies and decisions, unless such disclosure would cause it substantial competitive harm. Notably, when a company pays its executives incentive compensation even though relevant performance targets are not met, she said the Commission would expect it to disclose and discuss the targets in their CD&A.

Moreover, she noted that a company that relies on competitive harm as its reason for not disclosing performance targets must apply the same standard as it would in the context of a formal confidential treatment request for trade secrets or commercial or financial information contained in SEC filings. In such instances, the company will likely be asked by the SEC to explain its basis for omitting the targets. Further, Ms. Parratt noted that a company that omits a performance target because disclosure would cause it competitive harm must disclose how difficult or likely it would be for the company or executive to achieve the undisclosed target. This statement must be meaningfully specific.

Ms. Parratt also warned that companies that do not materially comply with the disclosure requirements will be required to amend their filings. Notably, this practice deviates from the SEC’s previous practice of providing companies with comments that were intended to inform their future filings. In closing, Ms. Parratt stated that companies should focus on making their disclosure more meaningful and understandable and encouraged companies to think broadly and not limit disclosure to the examples provided by the SEC.

B. Glass Lewis’ Approach to Evaluating Compensation Discussion and Analysis Disclosure

During the 2010 proxy season, Glass Lewis will continue to provide a detailed CD&A analysis for the S&P 500 as well as all companies that provide shareholders with a non-binding advisory vote on executive compensation (“say-on-pay”). As the CD&A requirement enters its fourth year, and companies face a potential SEC mandate to broaden the scope of such requirement, our analysis will maintain a methodical approach in evaluating general matters of content and clarity, but a more nuanced approach when assessing companies’ rationale for significant adjustments made to performance metrics, target payouts and benchmarking. After three years of SEC comment, we believe that companies should fully understand the CD&A requirement and face greater shareholder scrutiny in cases of inadequate or unacceptable disclosure.

Specifically, we will begin to explicitly rate a company’s CD&A disclosure based on our pointed critique of several key elements. We will look closely at the constituency of the company’s peer group and determine whether the company provides a reasonable rationale for benchmarking compensation levels at a specific percentile of such group. Moreover, we will examine the company’s rationale for selecting any disclosed financial performance metrics along with its discussion of how actual performance translated into objective pay determinations over the past year. Finally, in addition to closely evaluating the company’s rationale for granting any discretionary cash or equity awards, we will review the extent in which performance plays a role in the granting of equity incentives.

As an increasing number of companies are expected to provide shareholders with a say-on-pay proposal during the upcoming proxy season, our CD&A analysis, coupled with our proprietary pay-for-performance analysis, will carry much weight in our ultimate vote recommendation. We will support proposals at companies where pay is aligned with performance and shareholders are provided with a clear yet comprehensive overview of the processes and procedures related to executive compensation. Likewise, we will urge shareholders to vote against any say-on-pay proposal at companies where pay is grossly misaligned with performance, where shareholders are provided with vague or limited information in the CD&A, and where a reasonable analysis suggests a compensation structure in drastic need of reform.

Notable Issues

On July 1, 2009, the SEC approved an amendment to New York Stock Exchange Rule 452, thereby eliminating broker discretionary voting for all elections of directors held on or after January 1, 2010. Pursuant to the

amendment, NYSE member brokers may no longer vote in uncontested director elections on behalf of their customers without receiving specific voting instructions from those customers. The amendment allows an exception for companies registered under the Investment Company Act of 1940.

The SEC order culminates an almost five-year process to enhance the influence of shareholder votes in director elections. In April 2005, a working group was formed by the NYSE in order to review its rules regarding the proxy voting process. This proxy working group, comprised of representatives from listed companies, NYSE member organizations, lawyers, institutional investors and individual investors, found that uncontested director elections should no longer be considered a “routine” matter, and that the elimination of broker discretionary voting would lead to better corporate governance. The NYSE originally filed the proposal with the SEC in October 2006, and it underwent three amendments prior to being published for public comment by the SEC on March 6, 2009.

While some commenters claimed that the rule change might increase the costs for companies to achieve quorum, shift disproportionate weight to institutional investors, or increase the influence of proxy advisory firms, the SEC ultimately found that the rule change was designed to protect investors and the public interest. “In making this determination,” the SEC order stated, “the Commission believes that the NYSE’s proposal, among other things, furthers the protection of investors and the public interest by assuring that voting on matters as critical as the election of directors can no longer be determined by brokers without instructions from the beneficial owner, and thus should enhance corporate governance and accountability to shareholders.”

New Proxy Paper Features

In order to provide clients with an enhanced user-friendly format, we’ve implemented certain aesthetic enhancements to our reports for the 2010 proxy season. Election of director proposals will now display the overall percentage of director independence in the board table. In addition, our analysis of both say-on-pay proposals as well as the CD&A disclosure at S&P 500 companies will include a rating scale ranging from “exemplary” to “unacceptable” based on our comprehensive review of each applicable company’s executive compensation policies and procedures. Elsewhere in our reports, clients will find more detailed peer comparison financial data, while our analysis of equity incentive plan proposals will display additional historical information regarding burn rate and dilution calculations.



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