

### Say-On-Pay Now Front Row Center

Investors are using say-on-pay to make their voices heard in company boardrooms. Currently, companies that did not receive federal bailout money are not required to provide shareholders the opportunity to vote, but some, like Occidental Petroleum Corp. and Motorola Inc., have voluntarily offered shareholders the opportunity to vote. During the 2010 proxy season, shareholders at these two companies have expressed dissatisfaction by rejecting the companies' pay plans. Motorola was the first U.S. company to lose an advisory vote on its executive pay program, with Occidental following a week later.

#### *Non-Binding Vote*

A say-on-pay vote is simply a ye or nay vote on executive pay packages. While the vote is non-binding, a no vote sends a clear signal to the company's board, executives and the general public that shareholders are unhappy with how the company is paying its executives. If a pay program is voted down, the company may be forced to involve its largest shareholders in its executive compensation planning.

In 2009, Motorola was one of 42 companies with a say-on-pay vote at the shareholders' meeting where RiskMetrics Group (a leading shareholder advocacy group) ("RMG") recommended investors oppose pay practices. RMG cited

some elements of co-CEO Sanjay Jha's package as excessive (total 2008 compensation was \$104 million), as well as other executives' "excessive perks". There was a lack of support for the company's pay practices in 2009, with only 63.5% of shareholders supporting executive pay.

This year, only 46% of shareholders supported Motorola's pay package. In 2009, Mr. Jha's total compensation was \$3.8 million and Motorola's shares increased by 68%. However, investors criticized the compensation Mr. Jha would receive regardless of whether Motorola splits its mobile phone and set-top-box business into a new company that he would head. If the deal happens, Mr. Jha will receive a 1.8% to 3% stake in the new company. If the split doesn't happen by June 30, 2011, Mr. Jha will receive \$38 million. RMG objected to the arrangement and advised fund managers to vote against Motorola's pay practices in part due to this compensation arrangement.

Occidental has long been under fire for executive compensation, and CEO Ray Irani was one of the highest paid CEOs in the U.S. In 2009, Mr. Irani received \$31.4 million in total compensation, and over the last 5 years received approximately \$782 million, including option exercises and stock vesting.

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### Flash: Risk Metrics Introduces New Governance Tool

The Corporate Governance Quotient (CGQ) was the standard tool used by RiskMetrics Group ("RMG") to assess corporate governance risk. Recently, RMG introduced a new system, called Governance Risk Indicators (GRId) to replace CGQ in assessing governance risk.

GRId will be integrated with RMG's proxy voting decision-making, ensuring that it provides a more comprehensive screen of best practices. Specifically, GRId will identify an absolute level of concern (low, medium, high) across four independent dimensions: audit, board, compensation and shareholder rights. The risk assessment measures the degree to which a company's governance structures may meet, or fall short of, best practices in a particular market. The absolute measure ensures assessments are determined entirely by a company's own governance practices.

It is important to note that the US methodology includes a more robust compensation section, and questions in all categories are geared to capture more

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### Some CEO Perks Unchanged

In a shift that directly opposes public sentiment, some of the nation's largest financial firms have increased the perquisites ("perks") and benefits paid to CEOs. Items like country club dues, personal financial planning, chauffeurs, home security and parking fall under the definition of a perk. The perk that faces the most scrutiny, personal use of corporate aircraft, saw increases as well.

The chairman and CEO of JP Morgan Chase, Jamie Dimon, received \$91,000 in personal travel on the company aircraft in 2009, an increase of approximately 59% from the previous year. Mr. Dimon's total perks were \$266,000, an increase of approximately 19% from 2008. Mr. Dimon, as well as Lloyd Blankfein, CEO of Goldman Sachs and Richard Fairbank, CEO of Capital One, all received higher perks related to personal and home security.

Beyond Wall Street, Starbucks CEO Howard Schultz's security perks increased by 25% to \$640,000 in 2009, while \$1.7 million was spent by Amazon.com for CEO Jeff Bezos' security. Abercrombie & Fitch paid CEO Michael Jeffries \$4 million in exchange for limiting his use of the company's corporate jet. Jeffries' 2009 compensation was approximately \$36 million.

It is notable that perks increased at some companies that accepted government support: according to Equilar, a data service company, of the 29 largest publicly traded financial companies that received federal aid, nine increased perks for their CEOs. The CEOs at these nine banks received total perks worth more than the previous year, excluding relocation costs and related taxes.

The remaining 20 cut perks in 2009 after an increase in 2008. Executives at the firms surveyed received perks and benefits worth more than \$140,000 on average, down from \$380,000 on average in 2008. While all of the banks were operating with taxpayer funding for at least part of the year, 14 had repaid the money by year end.

There are strict limits on perks under the TARP rules created by the Obama administration, which is partially responsible for the year-over-year decline. For example, CEO Michael A. Carpenter of Ally Financial (formerly GMAC Financial Services) received \$35 of perks in 2009. His predecessor, Alvarao G. DeMolina, received \$4.8 million in perks in 2008.

The absolute dollars represented by perks and other benefits are minimal in terms of money that could have gone to shareholders or been reinvested in the business. However, corporate governance and shareholder activist groups believe that the granting of fringe benefits indicates that there is a different issue: the board's ability to gainsay a CEO. Many governance groups believe that fringe benefits are a leading indicator of a board that is not providing effective oversight.

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detailed governance data. It is possible that the new GRId system could result in negative compensation risk assessments for compensation arrangements that previously were not an issue under RMG's proxy voting policies. One of the items that will now receive a negative rating are severance provisions in change of control agreements that have a single or modified single trigger and are more than one year old. These provisions, under grandfathered arrangements, were previously ignored by RMG when making recommendations on equity compensation plans under its proxy voting guidelines. Another issue is tax gross-up provisions in change of control agreements previously disregarded by RMG. Tax gross-up provisions will likewise not be grandfathered under GRId.

The new GRId risk assessments are just beginning to be integrated. It is possible that many traditional executive compensation practices will result in a poor GRId score. How a poor rating affects investors remains to be seen. Companies should re-evaluate their executive compensation programs and disclosures in light of the new GRId rating system and monitor the market response to GRId through the coming months.

## Britain: Tough Corporate Governance

Britain's adoption of strict corporate governance policies has forced FTSE 350 companies to become more shareholder friendly. On this side of the pond, shareholders and management alike should consider these rules and what their impact may ultimately be on American companies.

### *The British Move Into the Boardroom*

Britain now requires that directors stand for reelection every year. Guidelines on director selection have also been supplied, stating that directors should be chosen "on merit, against objective criteria, and with due regard for the benefits of diversity, including gender diversity." In addition, there are new rules designed to more closely link pay to performance.

The new rules are Britain's reaction to the financial crisis. After the British credit crunch, it was clear that British bankers and financial companies did not fully comprehend the risks they were taking, and boards were not holding executives accountable for their mistakes. U.S. companies are still awarding meaningful perks, even to those executives that were operating under TARP for some portion of the year (see Some CEO Perks Unchanged).

U.S. lawmakers are working on a financial reform bill in reaction to the financial crisis. The bill would provide shareholders with a non-binding vote on executive pay, and has drawn the ire of many U.S. CEOs. More

than 40 CEOs including the chiefs of Office Depot, Verizon and Boeing went to Washington recently to fight a proxy access provision, which would make it easier for shareholders to nominate directors. However, this issue is not new: in 2007 in the face of intense pressure from corporate interests the Securities & Exchange Commission supported regulations that effectively block proxy access, making it harder for shareholders to put their own nominees on ballots.

It is difficult to predict the effect of the British reforms on American companies, but management should be aware of them as the issue is certain to arise again in the coming months.

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### *Impact of a Nay Vote*

Motorola claims to take the vote seriously and will dialogue with shareholders about how it pays its top executives. Occidental will also speak with its institutional investors and claims that it will use the information to re-evaluate the company's overall compensation program. It is currently unclear how the companies plan to involve investors or whether they will implement any suggestions directly. We will continue to provide updates on both Motorola and Occidental as these are two interesting cases in the world of say-on-pay.

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## The Top Performers

### Top 10 REITs Based on Year-to-Date TRS Gain:

	Company	Ticker Symbol	Year-to-Date TRS (1/1/10-6/15/10)
1	Strategic Hotels & Resorts	BEE	161.83%
2	Glimcher Realty Trust	GRT	158.96%
3	Arbor Realty Trust Inc.	ABR	147.74%
4	iStar Financial	SFI	117.97%
5	MPG Office Trust, Inc.	MPG	108.61%
6	One Liberty Properties	OLP	84.29%
7	RAIT Investment Trust	RAS	74.05%
8	FelCor Lodging Trust Incorporated	FCH	73.61%
9	Hersha Hospitality Trust	HT	71.43%
10	Ashford Hospitality Trust, Inc.	AHT	69.40%

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