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Back Soon

GLOBAL PROXY WATCH *is published 46 times a year, with an annual publishing break during the month of August. This is the last edition before the hiatus. The next issue will be published the first Friday in September.*

Gloves Off

Proxy Governance CEO blasts rival in call for ethics code, vote reform

Under fresh leadership, **PROXY Governance (PG), the Virginia-based global vote advisor, yesterday unleashed a surprise, blistering attack on rival RiskMetrics (RMG) as part of a call for overall reform in proxy voting.** Expect the move to herald rougher competition around the world among proxy services for investor contracts.

PG announced support for a proxy service industry code of ethics, a proposal issued for comment last month by Meagan Thompson-Mann, visiting fellow at **Yale**'s **Millstein Center for Corporate Governance and Performance** (**GPW** XII-25). PG is the first proxy advisor to do so. **The firm also asked the US Securities and Exchange Commission (SEC) to probe "the monopolistic power of RiskMetrics/ISS that has resulted in it wielding SEC-like rule-making authority over corporate governance practices without appropriate checks and balances."** PG wants US regulators to focus on "eliminating conflicts of interest that result from selling to institutional investors corporate governance ratings on companies while at the same time selling consulting services to those same companies about how to improve their corporate governance ratings." No word yet on whether the SEC will respond.

RMG issues ratings and consults to companies. It draws frequent charges of conflict of interest, but asserts that strong safeguards prevent any abuse. It declined to comment on PG's new charges. Like PG, US-based advisors **Glass Lewis** and **Egan-Jones** do not consult to companies. Nor do proxy voting services outside the US.

The SEC has in the past instructed funds to undertake due diligence when selecting proxy advisors. But PG CEO Michael Ryan thinks that advice is insufficient. **Ryan started June 2, after serving as a program chief at the US Chamber of Commerce, long known for its pugnacious sparring with investors over governance issues.** See yesterday's release as evidence that Ryan intends a new gloves-off PG. *[NOTE:* **GPW** *editor Stephen Davis is project director at the Millstein Center.]*

No Access?

Yes, shareowners again got the door slammed on them in a bid to nominate candidates to a US corporate board. But a July 17 **Delaware Supreme Court** ruling may also have opened up options. **The court rejected a binding bylaw proposal filed by AFSCME that would have required CA to pay the expenses of a successful election of a minority director slate** (**GPW** XII-27). Such a bylaw violates Delaware law, justices found, by abolishing board discretion to exercise fiduciary duties. But here's the kicker. **The court endorsed AFSCME's central contention that "the shareholders of a Delaware corporation have the right to participate in selecting the contestants for election to the board." Grant & Eisenhofer** attorney Michael Barry, who argued the case for the union pension fund, says this opens the possibility that a re-framed bylaw granting board discretion would pass Delaware muster. Expect a fresh effort next year. **But the case reinforces union fund determination to secure nomination rights through the US Securities and Exchange Commission (SEC).** The agency blocked shareowner director nominations ('access') last year but may reconsider, despite outgoing Commissioner Paul Atkins' plea last Friday not to (**GPW** XI-43). Expect access to be one of the thorniest challenges for the SEC which, with three new commissioners, returns to full strength next week.

Briefings

ⓘ ***Off the Hook*** Shareowners at European companies should stop treating commonplace 'discharge' resolutions as harmless, says a detailed new report by **Manifest**, the UK proxy voting firm. **The resolutions could curb shareowners' ability to hold board members**

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to account—by suing them, for instance--should future disclosures reveal misconduct, the study asserts. Proposals usually ask investors to discharge the board from liability for actions taken over the previous year. Manifest found such resolutions in 13 European markets, though they are only symbolic in Austria, Germany, France and Spain. **Morley Fund Management, which sponsored the research, is working with Railpen and Manifest to press for better disclosure of the resolutions. Next in store could be a shareowner campaign for their abolition.** *Contact Anita.Skipper@morleyfm.com.*

SOX Off?

An upcoming US federal court decision could put the Sarbanes-Oxley Act (SOX) and **Public Company Accounting Oversight Board** (PCAOB) in play. A conservative Washington, DC lobby called the **Free Enterprise Fund** (FEF)—whose website and phones are now disabled—brought suit, arguing that the PCAOB violates the Constitution's separation of powers clause. Why? Because board members are appointed by the **Securities and Exchange Commission** instead of the US president, who has the power to name all federal officials. The PCAOB was created after Enron to clean up the auditing industry. A 2007 district court ruling threw out FEF's suit. But the **US Court of Appeals** reinstated it. Expect a decision soon. Congress could fix the challenge by tinkering with the PCAOB. But that would reopen SOX legislation, giving eager parties on all sides the rare chance to amend provisions. **If the court sides with the plaintiffs, expect fierce clashes between shareowner and business interests—and possible big changes in US corporate governance regulation.**

Southern Rebels

If granted a 'say on pay,' shareowners may actually use the power. **That's what happened last week in Australia, where investors stunned another boardroom by vetoing a severance package.** A lofty 57.4% vote against management came at **OZ Minerals** (now Oxiana). Investors were steamed at the A$10.7 million payout granted to outgoing CEO Owen Hegarty. Even though the company's stock has plunged by more than 60% in recent months, Hegarty was in line to take home A$5.4 million in cash for surrendering 6 million options that are way underwater at today's prices. "The solution here is very simple," opined the **Mayne Report**, a watchdog. "Let Owen keep the options." The shareowner revolt follows a similar one at **Telstra** last November, when two-thirds voted against the telecom giant's executive remuneration report (**GPW** XI-40). Still, while Aussie shareowners may be willing to buck director decisions on pay, they are not ready to toss directors out on their ear for mistakes. **A new RiskMetrics study observes that Australian directors are far more secure than members of Parliament, winning an average 96% vote on reelection.**

Update

The Children's Investment Fund *won four of the five board seats it was seeking at* ***CSX*** *on July 16, three weeks after an inconclusive AGM left the disputed ballot in doubt (**GPW** XII-26). However, the embattled railroad is continuing a court effort to invalidate some of the votes in the hopes of unseating the newcomers.*

Samsung *chairman Lee Kun-hee was sentenced to a suspended prison sentence for tax evasion on July 16, but absolved of charges that he handed control of the company to his son through illegal stock transactions (**GPW** XII-17). As a result, the Lee family is likely to retain control of Korea's largest company.*

Banker's Trust

Global bankers last week placed bets that voluntary curbs on excessive executive pay and lax risk management could ward off government regulation in the wake of the credit crisis. On July 17, the **Institute of International Finance** (IIF), an association of large banks, issued final recommendations on a plan floated earlier this year (**GPW** XII-13). **It calls for banks to tie executive remuneration to risk-adjusted performance aligned with shareowner interests and long-term, firm-wide profitability.** Plus, employee incentives should not "induce risk-taking in excess of the firm's appetite." Severance pay for departing executives should take into account "realized performance for shareholders over time." The IIF's measures are voluntary. Are they enough to calm lawmakers and regulators?

Job Board

ASrIA, the Association for Sustainable & Responsible Investment in Asia, needs a new executive director to replace Melissa Brown, who is leaving the post after five years. Candidates should have experience with financial services in Asia, plus expertise in environmental, social and governance (ESG) issues. Founded in 2001, ASrIA has become the chief advocate of ESG investing in the region. The job, based in Hong Kong, starts in October. *See www.asria.org/jobs/position/1216867870.*

Hermes Equity Ownership Services is looking for an associate director or director for its Asian governance and engagement team. Candidates must be fluent in Japanese. The post is based in London with travel to Japan. *Contact Sharon Reeves at s.reeves@hermes.co.uk.*

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