

Crossing the Pond ... In Search of Better Executive Compensation Practices

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Across the globe, executive compensation remains in the headlines, and hot in the sights of politicians, legislators, and governmental regulators. There has not been any shortage of finger-pointing at bad practices, nor pressure for quick adoption of best practices. From the United States to the European Union (E.U.) and the United Kingdom, a convergence is occurring as companies refine and improve not only “what” executive compensation they provide, but also the “how” and the “why” behind their decisions. The same best and worst practices are being acknowledged worldwide, even though the discussion that follows is focused on the pond known as the North Atlantic.

Best Practice #1—Converting from Short-term to Long-term Incentives

In June 2010, the Norwegian Corporate Governance Board issued a release that concisely summarizes the executive compensation practices to which employers are being called globally these days. In a nutshell, Norway’s release calls for “attention to the requirements in the E.U. Recommendation for long-term sustainability and convergence of interests between the company and its shareholders, as well as guidance on contractual rights to claw-back bonus payments and on the content of the statement on the remuneration of executive personnel.”¹

Canada’s Coalition for Good Governance has gone a step further by issuing executive compensation principles dictating that performance-based incentives “should be based on

measurable risk adjusted criteria, matched to the time horizon needed to ensure the criteria have been met”.² This is entirely in line with the mandate from U.S. banking regulators—broadened to U.S. public companies through an SEC rule, adopted in December 2009 requiring disclosure of material risks from incentive practices, whether at the executive or any other level within the company.³ The U.K. Corporate Governance Code that took effect June 29, 2010 requires that all companies with a premium listing of equity shares in the United Kingdom “comply or explain” against a variety of executive remuneration principles—one of which focuses on providing performance-related compensation to promote long-term success in a manner compatible with the company’s risk policies and systems.⁴

Further, Canada’s principles regarding performance-based compensation recommend that plans include “caps to limit the incentive to take unmanageable risks or to avoid paying for unsustainable performance.”⁵ This call for maximum limits already applies under the United Kingdom’s Combined Code,⁶ and is echoed in EU Recommendation 2009/385,⁷ as well as in the Norwegian⁸ and Swedish⁹ Codes of Practice.

Because the prospect of massive cash bonuses has been singled out as a cause for the excessive risk-taking that drove or contributed significantly to the 2008 financial meltdown, banking regulators have pressed for longer-term executive compensation structures. In the United States, the primary banking regulators have jointly required this as core principle for sound incentive compensation, and have coupled this with a warning that safety and soundness examinations will audit for this risk. Going a step further, the European Parliament has barred bankers in its 27-country bloc from receiving immediate cash payments of more than

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30 percent of their bonuses, and requires that the remaining 70 percent be deferred for future payment over at least three years.¹⁰ Most recently, the E.U.'s Committee of Banking Supervisors has announced that its tough new regulations will apply not only to the world-wide operations of E.U.-based banks but also to the European subsidiaries of non-E.U. banks.¹¹

Strict regulation of executive compensation may make it difficult for companies to structure sufficiently strong compensation packages in effort to retain directors, executives or highly skilled individuals. As a result, companies and their compensation and benefits advisors will have to become increasingly creative with the design of longer-term incentive pay structures, while adhering to the strict guidelines established by regulators.

Best Practice #2—Protecting against the Bad

When it comes to protecting key business interests, there is more to the executive compensation puzzle than ensuring that incentives are earned over a period that reflects the time horizon for the risks that they could trigger. The use of “golden handcuffs” and other enforcement-oriented protections is an emerging best practice that is designed to discourage key employees from violating their non-competition, non-solicitation, and non-disclosure commitments (which we refer to here as “loyalty covenants”). On a global basis, there is room to design deferred compensation and stock awards in a manner that positions employers to enforce loyalty covenants.¹²

French courts are also increasingly called to rule on the validity, if not legality, of deferred compensation entitlements. Vivendi's former CEO Jean-Marie Messier today remains in troubled waters over his past payment claim of a €20.5 million golden parachute. Criminal judges—called to rule over the white collar crimes suspected to have led to the demise of Vivendi Universal—will soon let the former CEO know whether his golden parachute

agreement should be regarded as illegal on account of a misuse of corporate property. Also, when not taking legal action, listed companies' shareholders continue to be on watch for excessive executive pay, and French listed companies routinely find their CEOs and boards faced with hot questioning.

When it comes to wrongful conduct by executives, employers have found willing partners at the legislative and regulatory level. Within the decade following Enron, the use of clawbacks has gone from being a little-known device, to being a best practice, to being governmentally-required. An E.U. Recommendation issued in 2009 encourages companies to reserve contractual rights to “claw-back” executive compensation when performance-based awards are infected with incorrect facts.¹³ Similarly, the U.K.'s new Corporate Governance Code requires companies to consider having their compensation plans include a provision permitting the company to reclaim portions of compensation paid as the result of misstatements or misconduct.¹⁴ In the United States, the same requirement will become a listing requirement for the New York Stock Exchange and Nasdaq, as soon as the U.S. Securities and Exchange Commission issues regulations to implement this requirement, which was established by the U.S. Congress in the highly-publicized financial reform legislation known as the Dodd-Frank Act.¹⁵

Best Practice #3—Improve Governance—and Accountability

In its Green Paper released September 29, 2010, the E.U. Commission asks whether it is necessary to increase the accountability of members of the board of directors, and whether current civil and criminal liability rules applicable to directors should be reinforced.¹⁶ A recent review of U.S. law answers “yes” on both counts, concluding that government activism is necessary because existing civil liability standards “have not been particularly successful at curbing excessive compensation packages.”¹⁷

Today, many E.U. nations are recasting corporate governance principles and disclosure obligations into the framework of their corporate governance codes. These codes aim to ensure longevity of company life, board success and fair compensation for company directors. European leaders have said: “We want...to promote management responsibility and integrity. In particular, we call on supervisors to elaborate codes of conduct to ensure that compensation does not focus on short term performance and does not encourage excessive risk taking.”¹⁸ Nevertheless, the content, the differing methodology of implementation, and varying language of the assorted corporate governance codes reveals the relative esteem in which these goals are held.

Though French President Nicolas Sarkozy made headlines for suggesting a strict regulation policy in the depths of the recession,¹⁹ the United Kingdom and The Netherlands are the true standard-bearers in the realm of compliance.²⁰ The U.K.’s set of principles, which is supplemented by best practice guidelines, employs the “comply or explain” principle. This Combined Code on Corporate Governance enunciates a clear framework for determining director remuneration, while the Directors’ Remuneration Report requires detailed information regarding disclosure of salary, terms of employment, benefits and termination agreements. Key points of the Combined Code have influenced other nation’s policies; the need to attract, motivate and retain successful talent, linking of compensation to performance, reduction of excessive risk taking, formation of a compensation committee and transparency in reporting. Despite recommendations being non-binding, failure to obtain shareholder approval on these matters is significant.²¹

In The Netherlands, Germany, and Spain corporate governance codes also employ the “comply or explain” model. Significant to both the Dutch and German Code is its cap on severance payments to board members. Details of remuneration packages, specifically, fixed and variable salary components, pension and severance clauses must be published on a Dutch

company’s website or in the German or Spanish company’s annual report during the relevant year. Interestingly, in Germany, disclosure of individual remuneration can be avoided if 75 percent of shareholders pass a resolution to this effect.²² Yet, the three countries differ in their adherence to shareholder voting—it is binding in The Netherlands, advisory in Germany, and voluntary in Spain.²³

Since the mid-1980’s France has incorporated corporate governance principles into its Commercial Code. In 2001 and 2003, two particular laws were passed to strengthen the legal foundation of corporate governance in France. These laws specifically targeted transparency issues which affect executive pay packages and ethical practices within companies.²⁴ AFEP-MEDEF guidelines, which are not mandatory but carry considerable influence, supplement the Commercial Code. These recommendations have staunch governmental support and, as such, voluntary adherence.

And in the United States, some refer to “governance on steroids” when considering the vigor with which its Congress, President, and governmental regulators have punctiliously attempted to curtail bad practices in the post-Enron world initiated by the U.S. Sarbanes-Oxley Act. Since the Sarbanes-Oxley Act, the United States has seen a steady flow of corporate governance changes, from increasing disclosure of compensation practices to requiring mandatory recoupment of executive compensation for companies receiving government assistance. Most recently, the U.S. Congress passed the Dodd-Frank Act, which established far-reaching corporate governance reform. Unlike previous Congressional intervention into pay practices, which were limited to certain industries, the broad mandate of the Dodd-Frank Act applies to all U.S. public companies.

Best Practice #4—Increasing Transparency

Board decisions relating to executive compensation have long been considered a window

to the soul of company governance. In the United States, the Securities and Exchange Commission (SEC) has a long history of rule-making aimed at more fulsome disclosure—most recently in 2006 when the SEC comprehensively expanded its rules—converting to a principles-based approach premised on “all means all” for the executive compensation that public companies must annually disclose and explain to shareholders.²⁵

French listed companies have also felt the pressure to end entrenched instincts to shelter information relating to directors’ pay packages.²⁶ Not only did the French parliament act in 2007²⁷ to instill more transparency requirements into existing laws, but both the AFEP (Association of French Private-Sector Companies) and the MEDEF (French Business Confederation) joined forces in 2008²⁸ to issue guidance and rules on transparency over company executive compensation. In strict legal terms, the latter set of rules has no binding force; rather, these best practice recommendations augment the regulatory policies of the French Commercial Code. The associations they emanate from, however, have a strong enough influence to turn any non-abiding listed corporation into a black sheep. A company opting out from these rules may entice shareholders to turn the next annual meeting into a CEO’s nightmare. In other words, transparency governs, and so do the rules of AFEP-MEDEF.²⁹

Among AFEP-MEDEF recommendations are the initiative by boards of directors to “comply or explain” regarding the degree corporate governance has been complied with in determining executive compensation.³⁰ As in the U.S. and elsewhere, the annual report for French public companies must include a host of mandatory information items; board composition, risk management procedures, as well as disclosure of aggregate remuneration,³¹ and should not fail to describe any deferred compensation item—particularly golden parachutes and stock option plans. Omissions or failures to do so may lead to public prosecution. Frustrated shareholders may also force publicity over directors’ compensation by seeking

recourse in the provisions of Section L. 225-115 (4°). The latter section of the Code of Commerce entitles any shareholder to obtain full disclosure of the compensation of a joint-stock corporation’s top paid individuals. The company’s auditors may be called to certify such compensation amounts, and a petition to a judge is available if necessary.

The E.U. is also working hard to make transparency more stringent while strengthening corporate governance standards and practices within member countries. Due to the financial meltdown, strengthening corporate governance at financial institutions in the E.U. has become a core issue. While “most European countries have already adopted corporate governance codes or transparency regulations, which among other things, address executive pay,”³² in June 2010, the E.U. Commission issued a Green Paper organizing a pan-European consultation on corporate governance in financial institutions and their remuneration policies. These policy recommendations focus on the need for reliable and effective risk management procedures; regulations and restrictions on stock option plans and golden parachutes; strengthened authority of risk officers, auditors and CFOs; and more expertise among board members.³³ But corporations involved in non-financial sectors will not be left behind as E.U. French commissioner Michel Barnier announced that a distinct Green Paper will address the same concerns for non-financial public and private corporations. The E.U. is ready to strike hard. Among its list of specific questions, the commission is asking all E.U. interested parties whether national parliaments should introduce more restrictions, if not a complete ban, on stock options and golden parachutes.

Best Practice #5—Hearing Shareholders

Though the United Kingdom first began considering providing shareholders with the right to vote on executive compensation (often referred to as a “say on pay”) in 1997, such a vote was not required until the creation of

the Director's Remuneration Report in 2002. Despite over a decade of say on pay considerations in the U.K., the U.S. appeared reluctant to adopt the practice. Nonetheless, driven by the demand for increased compensation regulation, the U.S. Congress included as one of the Dodd-Frank Act measures, a mandatory, though non-binding, shareholder vote on pay practices.³⁴

French law and the AFEP-MEDEF rules make it clear that when designing a director's package, French boards or compensation committees can no longer be the sole arbiters of executive remuneration packages. Among other considerations, the ingredients are clear: compensation should be assessed "as a whole", clearly delineated to comprehensively understand the pay package; unbalanced pay packages, which are not intrinsically connected to the company's objectives, performance, and financial means should be eliminated. Criteria used to award certain compensation items should also be unambiguous, voted and accessible to shareholders.

Environmental, social and governance (ESG)³⁵ issues are increasingly being linked to companies' long-term financial stability, growth and value creation for shareholders. As companies respond to demands of regulators and shareholders, remuneration linked to long-term targets and measured performance on ESG issues is vital. Remuneration policies that include shareholder dialogue supported by quality disclosure and integration of ESG issues is crucial to delivering sustainable companies, managed in the long-term interests of shareholders and society.³⁶

Throughout Europe there has been a resurgence of "say on pay" proposals regarding shareholders' rights to vote on executive pay decisions. The global effects of the financial crisis have led legislators and regulators to adopt principles related to incentives, compensation and bonuses. Because both shareholders and boards are obligated to tackle the extremely intricate and complicated issue of "say on pay" proposals, the potential exists for improved dialogue and awareness between the two entities.³⁷

Much of the recent global financial crisis was due to inadequate financial oversight. Companies and financial institutions took extreme risks which were not in their or society's long-term interests. Companies bear the responsibility of initiating improved corporate governance from within. Supervision and regulatory reform can only be effective if companies themselves are engaged in strict adherence to risk prevention and appropriate fiscal management.

Similarly, Norway and Sweden have set forth in their respective Codes of Practice a recommendation that companies adopt policies on corporate social responsibility—addressing issues from the environment, to human rights, employment issues, and the working environment.³⁸

Worst Practice #1—Overuse of Stock Awards

"More than anything else, stock-based compensation is responsible for short-termism in the modern corporation and the shrinking average tenure of today's chief executives. The solution is to replace stock-based compensation with incentives that affect underlying value—whether that is increasing revenues, profitability, market share, customer service, or, optimally, a combination of all of these."³⁹

Oh how the executive compensation world has changed! In the wake of Enron and the bubble burst of the early 2000s, stock options became a widely questioned form of incentive compensation—essentially being blamed for excessive risk-taking.⁴⁰ Conventional wisdom settled on restricted stock and performance shares as the most effective long-term incentive, because their value—being based on that of whole shares—best aligns executive financial interests with those of shareholders. But is a stock-based incentive necessarily desired?

The question is worth asking because the market value for an employer's common stock may fluctuate for reasons unrelated to corporate performance. Notably, trading prices often

reflect public perception of general financial or industry conditions. Aside from those vagaries, an employer's stock value will rise and fall based on public statements by its executive officers—which could create perverse incentives for them to puff corporate results or opportunities. For a notorious example in that respect, think Enron.

Perception does not factor into business operating or financial results, suggesting that the next trend in executive compensation ought to involve balancing stock awards with long-term incentives that have a value based on measures such as return on equity or percentage increases in net profit or earnings per share (to name but a few of the many alternatives). Rather than targeting a 50-50 split between annual bonus and stock awards, future annual incentives would seem better structured along the following lines:

Type of Incentive	Percent of Total Incentives	Performance Measure
Annual Bonus	20%	Net income and other key measures of corporate success.
Restricted Stock or Units	40%	Value based on a fixed percentage of annual bonus; performance-based vesting.
Deferred Compensation	40%	Value based on fixed percentage of annual bonus; performance-based vesting, with appreciation based on future corporate performance measures such as net income, return on equity, and earnings per share.

Worst Practice #2—Unjustifiable Severance

Along with the global governance reforms introduced in recent years, public companies have had to expand dramatically on their disclosures of the severance that they have paid—or

are committed to pay—to their executive officers. In the United States, it is now standard for the annual proxy statements of public companies to include one or more tables that quantify the severance that executive officers may potentially receive upon a termination of employment or a change in corporate control. The United Kingdom requires similar disclosure, under its Companies Act of 2006 and listing rules for publicly traded companies listed on a national stock exchange.

In France, such exit packages face fierce scrutiny at annual meetings, with shareholders often numb to the fact that severance is being awarded in part to make up for the absence of unemployment insurance and sometimes low retirement benefits for company directors and executives. Angry shareholders, however, are raising their voices against golden parachutes as they witness CEOs departing in failure at a time when companies struggle with their finances in the current economic climate. Additionally, “[b]oth the company and board members can be convicted of the criminal offence of abuse of corporate assets if the courts deem a payment excessive in light of the company’s financial circumstances.”⁴¹ France introduced some important new statutory provisions in 2007 governing the disclosure and structuring of golden parachutes in listed companies—as part of the act named “Loi en faveur du travail, de l’emploi et du pouvoir d’achat”⁴² also known as the “TEPA” act. Among many other provisions, the TEPA act introduced two important mandatory features regulating golden parachutes in France: (i) the act made it mandatory that golden parachute entitlements should be subjected to performance criteria. The board of directors must detail and set the performance criteria or targets at the time of introducing any deferred compensation arrangement—and the company’s board shall, at the time of payment, identify whether the said performance criteria have been fulfilled and, (ii), the board of directors must disclose its resolutions awarding deferred compensation entitlements or golden parachutes prior to any payment of such golden parachutes—and disclose its resolutions stating that the beneficiary

did meet his or her golden parachute performance criteria or targets.

Recently, troubled auto parts supplier, Valeo's announcement that departing chairman and CEO Thierry Morin would receive a €3.2 million "golden parachute", sparked public outrage.⁴³ The public was similarly incensed over Alcatel Lucent's payout to executives who were forced out after overseeing a loss of about half the company's value. After details emerged of a multi-million euro payout following Noel Forgeard's departure from Airbus parent company EADS, politicians called for Forgeard to repay the money.⁴⁴

Conclusion

On both sides of the pond, a stagnant and struggling economy promises to keep executive compensation hot in the sights of a stressed public, and of watchful shareholders and governmental regulators. As governments appear to be coming to a consensus as to which compensation practices are appropriate given the state of the global economy, the pressure is "on" for corporate directors to step forward with best practices, and to be held accountable for being worst. As Gordon Gekko warns in the movie *Wall Street 2*, pigs will be slaughtered. Now is not the time to risk being perceived either as a pig—or as one feeding them.

Notes

1. Norwegian Corporate Governance Board Release dated June 21, 2010 § 1.2 available at <http://www.ncgb.no/filestore/Consultationdocument-TheNorwegianCodeofPracticeforCorporateGovernance.pdf>.
2. Executive Compensation Principles (2009), the Canadian Coalition for Good Governance, Principle 2 at pages 6-9 available at http://www.cgg.ca/site/ccgg/assets/pdf/2009_executive_compensation_principles.pdf.
3. See, e.g., SEC Release 33-9098; Board of Governors of the Federal Reserve System, *Guidance on Sound Incentive Compensation Policies* available at <http://sec.gov/rules/final/2009/33-9098.pdf>.
4. U.K. Corporate Governance Code § D.1.1 and Schedule A, June 29, 2010 available at <http://www.frc.org>.

[uk/corporate/lukcgcode.cfm](http://www.frc.org.uk/corporate/lukcgcode.cfm) ("comply or explain" principles require that board recommendations must either be complied with or the reasons for the non-compliance must be explained).

5. Executive Compensation Principles, *supra* note 2, at 7.
6. U.K. Corporate Governance Code, *supra* note 4, at Schedule A § 1.
7. The Commission of the European Communities, Commission Recommendation 2009/384/EC, April 30, 2009, *Official Journal of the European Union*, L120-22 § 3.1 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0022:0027:EN:PDF>.
8. Norwegian Code of Practice for Corporate Governance § 12, 21 October 2009 available at <http://www.nues.no/filestore/TheNorwegianCodeofPracticeforCorporateGovernance21October2009.pdf>.
9. Swedish Corporate Governance Board, Swedish Code of Corporate Governance § III.9.5, February 1, 2010 available at <http://www.corporategovernanceboard.se/the-codel/current-code>.
10. See Liz Alderman, *Cap on Bank Bonuses Clears Hurdle in Europe*, N.Y. Times, July 7, 2010 available at <http://www.nytimes.com/2010/07/08/business/global/08bonus.html>.
11. "Banks in EU brace for touch pay law" (Financial Times, Oct. 8, 2010, page 1).
12. See, e.g., *Duarte v. Black & Decker*, 2007, EWHC 2720.
13. See EU Recommendation, *supra* note 7 at § 4.6.
14. See U.K. Corporate Governance Code, *supra* note 4, at Schedule A.
15. See *Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)* § 954 (Pub.L. 111-203), July 21, 2010 available at http://docs.house.gov/rules/finserv/111_HR4173_finsrvcr.pdf.
16. See http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf.
17. Miriam A. Cherry & Jarrod Wong, *Clawbacks: Prospective Contract Measures in an Era of Excessive Executive Compensation and Ponzi Schemes*, 94 Minn. L. Rev. 368, 375-376 (2009).
18. *French Business Group Aims to Cut Golden Parachutes*, Reuters, October 6, 2008 available at <http://www.reuters.com/article/idUSL639766820081006>.
19. See, e.g., *Sarkozy Chides Bankers for Bonus, Calls for Tougher Regulation*, France24.com, August 26, 2009 available at <http://www.france24.com/en/20090825-sarkozy-chides-bankers-bonuses-economic-crisis-france-G20>.
20. Guido Ferrarini & Cristina Ungureanu, *Fixing Directors' Remuneration in Europe: Governance, Regulation and Disclosure*, University of Genoa, Roundtable on

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- Directors' Remuneration, 23 March 2009 available at http://ec.europa.eu/internal_market/company/docs/directors-remunroundtable_ferrarini_en.pdf.
21. Simon Evans & Carly McIver, *Credit Crunched—Executive Pay Across Europe*, Practical Law Company—Cross Border Quarterly, January-March 2009 available at: <http://crossborder.practicallaw.com/6-384-2854>.
22. *Id.* at 29.
23. Eurosif Theme Report-3rd in a series - Remuneration, January 2010 available at http://www.eurosif.org/publications/sector_theme_reports/remuneration.
24. Principles of Corporate Governance—France, eStandardsForum—Financial Standards Foundation, February 2010 available at <http://www.estandardsforum.org/france/standards/principles-of-corporate-governance>.
25. See John W. White, Director, Division of Corporate Finance, Securities and Exchange Commission, Address by SEC Staff: Principles Matter (Sept. 6, 2006) available at <http://www.sec.gov/news/speech/2006/spch090606jww.htm>.
26. In the years 2001 to 2010, French law became increasingly serious about making transparency mandatory. Statutes require that a joint stock corporation's management set forth an itemized description of the directors' compensation structure in the company's management report to its annual meeting. See French Code of Commerce § L225-102-1 available at http://www.legifrance.gouv.fr/html/codes_traduits/commercetextA.htm.
27. See Act No. 2007-1223 of 21 August 2007 in support of labor, employment and purchase power § 17 (referred to as "TEPA").
28. See *Code of Corporate Governance*, Recommendations of AFEP-MEDEF, October 6, 2008 available at <http://www.code-afep-medef.com>.
29. In the course of bank Credit Agricole's annual meeting held in May 2010, its former CEO, René Carron, had to publicly stress that the bank's golden parachutes as allocated to three of its former deputy executive directors, complied with the AFEP-MEDEF rules (Les Echos, May 20, 2010). Dassault System's board of directors' minutes make reference to the French Code of Commerce and the AFEP-MEDEF rules when discussing its directors' pay packages.
30. See AFEP-MEDEF Code of Corporate Governance, *supra* note 28 at Recommendation 22.
31. See Evans & McIver, *supra*, note 21 at 28-29.
32. *Id.*
33. See European Commission Green Paper Release, *Corporate governance in financial institutions and remuneration policies*, COM(2010)284 final, 2 June 2010 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0284:FIN:EN:PDF>.
34. See Dodd-Frank Act § 951. For a history of say on pay, see Paul Hodgson, *A Brief History of Say on Pay*, Ivey Business Journal, Septemter/October 2009 available at http://www.iveybusinessjournal.com/article.asp?intArticle_ID=856.
35. ESG is defined as any issue relating to environmental, social and governance matter. ESG information is a large subset of non-financial information. Non-financial information refers to information relevant to the assessment of economic value, but which does not fit easily into the traditional accounting framework. See *European Combined Report Alliance for ESG Position Paper*, page 2 available at http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/swedish-presidency/files/written-submissions/european_combined_reporting_alliance_en.pdf.
36. See Remuneration, *supra* note 20.
37. See Julia Hanna, *Shareholders Need a Say on Pay*, Harvard Business School—Working Knowledge, November 2, 2009 available at <http://hbswk.hbs.edu/item/6253.html>.
38. See *supra* notes 8 & 9.
39. See Roger Martin, *Reward Growth, Not Expectations*, Financial Times, August 4, 2010 available at <http://www.ft.com/cms/s/016bcd255a-9e5e-11df-a5a4-00144feab49a,s01=1.html>.
40. See Lucian A. Beichuk, Alma Cohen & Holger Spamann, *The Wages of Failure: Executive Compensation at Bear Stearns & Lehman 2000—2008*, Harvard Law School Discussion Paper No. 657, February 2010 available at <http://www.irrcinstitute.org/pdf/Harvard%20Paper%201%20-%20Wages%20of%20Failure.pdf>.
41. See Evans & McIver, *supra* note 13 at 30.
42. See *supra* note 23.
43. See Sarkozy blasts "golden parachute" payments, France24.com, March 26, 2009 available at <http://www.france24.com/en/20090324-sarkozy-executive-compensation-bonuses-stock-options>.
44. See *supra* note 18.
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