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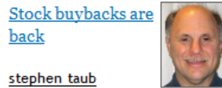

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TARP boards have yet to demonstrate independence

Monday, 22 March 2010

By Sheryl Nance-Nash

While banks and other companies that have been bailed out by taxpayers have taken some significant steps to change their governance practices, they still have a considerable way to go, experts say.

Ninety percent of the companies that participated in the Troubled Asset Relief Program have made changes to their boards in the past two years, according to a study of 25 companies that received taxpayer assistance.

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But more than three-quarters of the companies studied still combine the chief executive and board chair roles, compared with to 48 percent in the broader market, according to the study, which was conducted by the Corporate Library, a governance research firm that maintains a database on the boards of more than 3,000 North American companies.

The TARP companies studied do have better practices than most US companies when it comes to director elections, according to the study. Sixty-eight percent now use a majority standard for director elections. Four of these companies changed this standard since their 2008 annual meeting.

In contrast, only 24 percent of the companies in the database use a majority voting standard for director elections. Additionally, only 16 percent of the TARP companies studied have "classified" boards, i.e., those with staggered terms, an anti-takeover mechanism that critics say insulates managers from investor pressure, compared with 50 percent of the companies in the database. However, board declassification was undertaken by most of the TARP companies studied well before the financial crisis.

"The new directors, as a whole, seem well-qualified and competent," senior research associate Annalisa Barrett, senior research associate of the Corporate Library, wrote in a report accompanying the findings. "However, history has shown that a group of people with good resumes can sometimes do a terrible job at overseeing corporate management."

The report highlights companies such as Citigroup and AIG. On the plus side at Citi, post-crisis appointees will predominate on its board following the upcoming departures of three directors. And it will have only six directors whose tenures are longer than two years. A new oversight committee is monitoring the disposition of the company's assets, and the nominating committee has gained many powers previously held by the less-independent executive committee. The positions of chair and CEO are currently held by different people, and the bylaws now require the appointment of a lead director whenever the chair is not independent. However, the current chair is Richard D. Parsons, whose 14-year tenure on the board (along with his relatively lackluster performance as head of AOL/Time Warner) suggests that he may not be the ideal choice to provide new thinking to a company in need of it, Barrett noted

She also remains concerned about governance at AIG. Since being bailed out, AIG has separated the roles of CEO and chair, adopted majority voting for director elections, and formally assigned risk management responsibilities to its finance committee. The composition of the AIG board has also changed dramatically, with only two of the 11 current directors having served on the board for longer than two years.

However, Barrett says AIG's record on executive compensation continues to be poor despite these governance reforms and the oversight of the U.S. pay czar Kenneth Feinberg. There are high levels of fixed pay for the CEO, and the retention bonuses that employees at its financial services unit are required to return have not yet been fully repaid.

Market Data

US Stock Market Indexes

Symbol	Last	Change
NYSE	8497.41	43.65
Nasdaq	2831.58	6.02
S & P 500	1340.43	4.11
NYSE Volume		4166099
Nasdaq Volume		1907504

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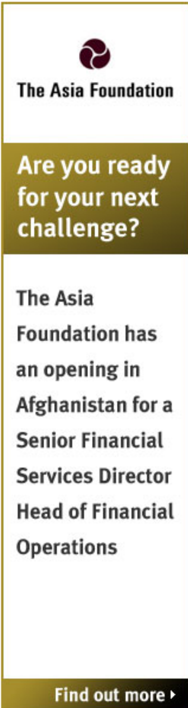

Other governance experts agree that it's too soon to pass judgment on board changes undertaken by such companies.

Patricia Lenkov, founder of executive search firm Agility Executive Search, chided Bank of America, for example, for lacking a succession plan when former CEO Ken Lewis resigned in late 2009, despite the appointment of four months earlier of four new directors.

Lenkov also criticized Wells Fargo for approving a retention plan for its CEO, John Stumpf, on December 24, 2009, one day after repaying its TARP funds. "Why couldn't they have waited a little bit for optic purposes?" she asked. "Where is he going anyway?"

John Allan James, a professor of management at Pace University, worries that investors may not care enough about governance because of the recent rise in the stock prices of banks and other bailed out firms. "We can only avoid, or at least ferret out earlier unethical and illegal activities if boards do their duties and exercise their responsibilities effectively," said James.

Some critics contend that many of the changes undertaken by TARP company boards are cosmetic in so far as they focus on changes in rules rather than management."They should begin to make management changes," said Michael Bechara, managing director of Granite Consulting Group. "What is needed mostly is action, not the drafting of more procedures."

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