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# REBUILDING CORPORATE BOARDS AND REFOCUSING SHAREHOLDERS FOR THE POST-ENRON ERA

KEITH L. JOHNSON<sup>†</sup>

## INTRODUCTION

We are at a critical point in the history of capitalism. A series of unexpected corporate disasters has rocked the markets and damaged the stature of the American business model. Workers have seen their retirement savings dwindle or even disappear. The media has made headlines out of our anger about the losses caused by corporate wrongdoers who made personal fortunes while misleading investors. Fear has driven shareholders out of the stock market in droves.<sup>1</sup>

Congress reacted to these developments by passing the Sarbanes-Oxley Act of 2002 (the "Act"), which contains accounting and corporate governance reforms that no one would have predicted could be enacted just a few months earlier.<sup>2</sup> The

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<sup>1</sup> For a general discussion of the impact that recent corporate scandals have had on investors and on the U.S. business model, see John A. Byrne et al., *How to Fix Corporate Governance*, BUS. WK., May 6, 2002, at 69; Kurt Eichenwald, *Even if Heads Roll, Mistrust Will Live on*, N.Y. TIMES, Oct. 6, 2002, § 3, at 1; Louis Lavelle, *The Best & Worst Boards: How the Corporate Scandals Are Sparking a Revolution in Governance*, BUS. WK., Oct. 7, 2002, at 104.

<sup>2</sup> The Act was signed into law by President Bush on July 30, 2002. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745. Among reforms included in the Act were creation of a new independent Public Company Accounting Oversight Board, § 101(a) (to be codified as amended at 15 U.S.C. § 7211); restriction of non-audit services that accountants can provide to audit clients, § 201 (to be codified as amended at 15 U.S.C. § 78j-1), a requirement that audit committees consist only of independent directors, § 206 (to be codified as amended at 15 U.S.C. § 78j-1); creation of CEO and CFO financial statement certifications, § 302 (to be codified as amended at 15 U.S.C. § 7241); mandatory off-balance-sheet transaction reporting, § 401 (to be codified as amended at 15 U.S.C. § 7261); and increased penalties for corporate fraud, §§ 901-904 (to be codified as amended in scattered sections of 18

New York Stock Exchange (NYSE) has proposed new listing standards calling for a majority of totally independent directors on boards, shareholder approval of employee stock option plans, and other reforms institutional investors have unsuccessfully sought for years.<sup>3</sup>

Has the call for reform run its course? Is there more to be learned from lessons of the past year? The most potent force created by the serial effects of Enron, WorldCom, Adelphia, Tyco, Global Crossings, Waste Management, Cendant, and other recent corporate tragedies may have been the awakening of the institutional investor community. Regardless of whether additional regulatory or legislative reforms are enacted, shareholders have seen how ineffective boards, conflicts of interest, and perverted compensation systems can destroy value.<sup>4</sup> They have also tasted the fruits of success through enactment of accounting reforms in the Act.<sup>5</sup>

We may be witnessing a once-in-a-lifetime cultural value change. According to McKinsey and Company, seventy-six percent of institutional investors in North America now say they would be willing to pay a premium for a well-governed company.<sup>6</sup> Additionally, fifty-seven percent of those investors say that corporate governance is as, or more, important than financial issues in their evaluation of companies.<sup>7</sup> Not long ago, attitudes toward corporate governance were not even considered important enough to survey.

Whether this new sensitivity toward corporate governance results in better run companies may depend in large part on how

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U.S.C.).

<sup>3</sup> See Corporate Governance Rule Proposals Reflecting Recommendations from the NYSE Corporate Accountability and Listing Standards Comm. as Approved by the NYSE Board of Directors (Aug. 16, 2002), at [http://www.nyse.com/pdfs/corp\\_gov\\_pro\\_b.pdf](http://www.nyse.com/pdfs/corp_gov_pro_b.pdf) (Aug. 16, 2002) [hereinafter Corporate Governance Rule Proposals].

<sup>4</sup> The Brookings Institute estimated that the combined cost of the Enron and WorldCom frauds to the nation's GDP could be as high at \$57 billion in the first year and will likely be much greater because that estimate was based on the assumption that the stock market would not drop below its July 22, 2002 level. See Carol Graham et al., *Cooking the Books: The Cost to the Economy*, BROOKINGS INST., POLICY BRIEF No.106 (Aug. 2002), available at <http://www.brookings.edu>. Plaintiffs' lawsuits claim hundreds of billions of dollars in damages to investors also have been caused by Enron and other recent corporate meltdowns. *Id.*

<sup>5</sup> See generally Pub. L. No. 107-204, 116 Stat. 745.

<sup>6</sup> McKinsey & Company, *Global Investor Opinion Survey: Key Findings* (July 2002), available at [www.mckinsey.com/governance](http://www.mckinsey.com/governance).

<sup>7</sup> *Id.*

current shareholder enthusiasm is channeled. If shareholders focus on the primary factors that are shown to improve corporate performance, then shareholders should be able to gain a more influential role to the benefit of all market participants. If, however, shareholders flail about in different directions without developing some common understanding of what is important and effective, a healthier governance system with an equilibrium of corporate governance checks and balances may remain out of reach.

One thing should be clear by now—the corporate governance model that produced Enron and its progeny has been in need of improvement. This Article suggests three basic principles for consideration by shareholders to guide them in an effort to grapple with the issues raised by recent corporate scandals and to work toward a more effective system of corporate governance. These principles are: (a) committing more resources and effort to corporate governance research; (b) improving director education; and (c) replacing ineffective directors.

#### I. DIAGNOSING INEFFECTIVE BOARDS: IGNORANT, UNCERTAIN, OR INEFFECTIVE?

Over the last decade, a number of recommended best practice codes for corporate boards have been developed. The Business Roundtable, the California Public Employees Retirement System (CalPERS), TIAA-CREF, the National Association of Corporate Directors (NACD), and the Council of Institutional Investors (CII) have all adopted principles or recommendations for model corporate governance structures and practices.<sup>8</sup> Although these best practice codes vary in many regards, they coalesced around several primary concepts, including the following:

A substantial majority of board members should be independent from management;

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<sup>8</sup> NAT'L ASS'N OF CORPORATE DIRS., REPORT OF THE NACD BLUE RIBBON COMMISSION ON DIRECTOR PROFESSIONALISM (2001 ed.); California Public Employees' Retirement System, *Corporate Governance Core Principals & Guidelines* (Apr. 13, 1998); Council of Institutional Investors, *Corporate Governance Policies*, at [http://www.cii.org/corp\\_governance.htm](http://www.cii.org/corp_governance.htm) (last visited Oct. 19, 2002); The Business Roundtable, *Principles of Corporate Governance* (May 2002), at <http://www.brtable.org/pdf/704.pdf>; TIAA-CREF Electronic Library, *Corporate Governance: TIAA-CREF Policy Statement on Corporate Governance*, at <http://www.tiaa-cref.org/libra/governance> (last visited Oct. 19, 2002).

Directors should bring a diversity of relevant skill sets to the board;

Only independent directors should be appointed to audit compensation and nominating or corporate governance committees;

Independent directors should regularly meet outside the presence of management and inside directors;

Boards should evaluate their own performance as well as that of the CEO;

Compensation plans should align the financial interests of directors and management with shareholders;

Planning for management succession is a central responsibility of the board;

Directors should be trained in carrying out their responsibilities; and

Boards should regularly communicate effectively and candidly with shareholders.

These basic principles make sense on an intuitive level and have recently been working their way into regulatory and exchange listing requirements.<sup>9</sup> Many companies, however, ignore these principles. For example, the NACD reports that boards of 39% of companies still lack a majority of unaffiliated independent directors, 30% have non-independent directors on their audit committees, 39% do not have a fully-independent compensation committee, and 60% do not have a nominating committee.<sup>10</sup> The NACD also reports that two-thirds of directors say they are not satisfied with how effectively board succession planning responsibilities have been performed.<sup>11</sup>

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<sup>9</sup> See, e.g., §§ 201–209 (to be codified as amended in scattered sections of 15 U.S.C.) (requiring that all audit committee members be independent). Listing standards proposed by the NYSE would require a majority of board members to be independent; limit members of the audit, compensation and nominating or corporate governance committees to independent directors; encourage training for directors; promote management succession planning; and require the independent directors to regularly meet in executive session without management. See Corporate Governance Rule Proposals, *supra* note 3

<sup>10</sup> NAT'L ASS'N OF CORPORATE DIRS., 2001–2002 PUBLIC COMPANY GOVERNANCE SURVEY (2001).

<sup>11</sup> *Id.* This level of dissatisfaction is surprising given that the NACD survey respondents rated CEO succession as their second most important responsibility, behind only corporate performance.

What is wrong with this picture? While a general consensus has developed on a number of basic corporate governance principles, a substantial number of boards have failed to adopt these best practices. There are three ways to explain why this has happened: (1) adoption of best practices is not seen by directors as having any clear positive net impact; (2) directors are not aware of the best practices recommendations; or (3) for some reason, directors have taken no action to adopt what they perceive to have value.

The first possible reason for inaction could be resolved through further research to identify and isolate the impacts of best practices and through better communication of research findings. The last two obstacles could be resolved by better educating directors and by replacing the ineffective ones with new candidates who are aware of issues relating to director duties and who are willing to act in the best interests of the corporation and its shareholders.<sup>12</sup>

Therein lie the challenges facing shareholders today as they seek to address corporate governance shortcomings. To maximize their positive impact, shareholders could remove these roadblocks by: (1) encouraging further interdisciplinary research to identify the factors that drive company success; (2) fostering the growth of meaningful director education programs and requiring that board members attend them; and (3) replacing directors who are incompetent, untrustworthy, or ill-suited to their roles.

A focus on corporate governance research, education, and election of new directors is substantially at odds with what most institutional investors have been doing over the last decade.<sup>13</sup> Advisory shareholder resolutions, which have been the mainstay of institutional investor shareholder activism, are almost always ignored by companies. That is not to say that positive changes cannot be obtained through pursuit of advisory resolutions. It is likely, however, that a greater impact on corporate performance

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<sup>12</sup> Directors are charged with a fiduciary duty to the corporation and its shareholders. See *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (citing *Loft, Inc. v. Guth*, 2 A.2d 225 (Del. Ch. 1938), *aff'd*, 5 A.2d 503 (Del. 1939)).

<sup>13</sup> Company responses to resolutions adopted by shareholders are tracked by the Council of Institutional Investors. Though dozens of resolutions pass each proxy season, only a few companies implement the resolutions. See Council of Institutional Investors, *Majority Vote Companies*, at <http://www.cii.org/majvotesum.htm> (last visited Oct. 19, 2002).

could be obtained by focusing shareholder activities on factors found to be directly associated with enhancing or maintaining corporate value. It makes little sense to devote great energy and resources to precatory shareholder resolutions when they are routinely ignored.

## II. SHAREHOLDER ACTION: THE KEY TO RESTORING CORPORATE GOVERNANCE

### A. *Commissioning Research*

To remain relevant in a post-Enron world, institutional investors need to re-evaluate the terms of engagement with their companies and identify those primary actions that would best serve their interests. Commissioning research on corporate governance and keeping abreast of the findings are the keys to success. It is time to replace what some view as the shareholder activism folklore of the twentieth century with a scientific approach. Knowledge is power, and it could be the engine that guides shareholder activism to meet the challenges of the twenty-first century.

That is not to say that shareholders have not already embarked on the scientific search to better understand which governance factors drive corporate success. There are a number of consultants, institutes, and academic institutions that engage in research on corporate governance from the shareholders' perspective.<sup>14</sup> But shareholders, particularly sophisticated shareholder groups, could benefit from taking a more active role in financing, directing, and using the knowledge base developed by that research.<sup>15</sup>

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<sup>14</sup> For example, the Investor Responsibility Research Center, TIAA-CREF Institute, University of Delaware Corporate Governance Center, Institutional Shareholder Services, and other organizations engage in relevant corporate governance research.

<sup>15</sup> One topic where shareholder-sponsored research could have helped in the past was with the use of employee stock options. Institutional investors accepted wholesale the argument that employee stock options would align the interests of management with shareholders. It has since become obvious that the most commonly used employee option plans actually provided management with incentive to artificially inflate stock prices over the short term so that options could be exercised at great profits. More recent research suggests that "[t]he relationship between executives' stock holdings and their companies' performance is so close to zero that it is zero in statistical terms." David Leonhardt, *Options Do Not Raise Performance, Study Finds*, N.Y. TIMES, Aug. 11, 2002, at 4. The only company

While shareholders have spent much time on how to identify an “independent director,” the psychological, behavioral, and intellectual factors associated with being an effective independent director have received little shareholder attention. What personality, relationship, educational, financial, experiential, and other criteria should be used to identify a good independent director candidate for an audit committee? Should the criteria differ between biotech and manufacturing company boards? How closely does the Act’s definition of audit committee member independence<sup>16</sup> track factors found to be associated with an effective audit committee? Is past experience challenging a CEO more important than financial and relationship independence? Would substantial long-term stock ownership be more important than other factors in identifying effective independent directors? These are just some examples of issues where additional research and knowledge could benefit shareholders.

It may also be that development of a better shareholder information base could be served by the participation of sociologists or behavioral psychologists, along with business, economic, and legal researchers, in a robust interdisciplinary approach to corporate governance research. An interdisciplinary perspective might be especially appropriate for issues like:

Identifying the different impacts that investors with short-term, versus long-term, horizons have on a company’s success in creating and maintaining value;

Analyzing the differences in employee retention associated with use of stock options versus restricted stock;

Whether the length of time that a director’s equity ownership interests in the company are locked up impacts how the director’s decisions align with shareholder interests as opposed to management interests;

Whether the length of the term to which a director is elected

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performance measure that seems to be related to executives’ equity holdings is earnings per share, and that can be controlled by management through things like stock buy back programs and cutting dividends.

<sup>16</sup> Sarbanes-Oxley Act § 301 (to be codified as amended at 15 U.S.C. § 78j-1(m)) (“In order to be considered to be independent . . . a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee . . . (i) accept any consulting, advisory, or other compensatory fee from the issuer; or (ii) be an affiliated person of the issuer or any subsidiary thereof.”).

affects the director's responsiveness to shareholder interests;

Examining the impact of diversity of age, sex, race, income, and other factors on effectiveness of boards in particular industries;

Identifying approaches that tend to make a new or dissident director most effective;

Determining when shared CEO/chairmanship posts are likely to present increased risks of corporate governance failure;

Finding how the level of CEO compensation affects decisions and actions of a CEO;

Evaluating whether directors are likely to be more effective if they have regular interaction with shareholders;

How public disclosure of director votes on particular issues would impact the board's procedures and decisions; and

Whether the presence of a competing candidate for a director's slot has any impact upon how that director performs after being elected.

Refocusing institutional investor resources on research may require greater interaction between academics and shareholder organizations. Such cooperation could be beneficial to identifying issues that merit shareholder focus and in informing institutional investors of research findings.

### *B. Cultivation of Director Professionalism*

Many board problems associated with ignorance or incompetence might be resolved through additional training and creation of more definitive expectations for directors—in other words, creating a more professional director role.

This concept of director professionalism should not be confused with "professional directors." Development of director professionalism is intended as an effort to equip each director with the tools to be as effective a shareholder representative as possible. It is not an attempt to create a separate class of individuals who view directorship as their sole occupation.

I am amazed that this issue has not received much attention until recently. Rarely do we interact with professionals of any type who were not trained to enter their profession and do not participate in continuing education, designed to keep their skills current. We may have devoted more of society's effort to ensuring the competency of barbers and manicurists than to

evaluating and maintaining the skill set of individuals being selected to oversee multibillion dollar corporations that control the fortunes and livelihoods of millions of people.

An infrastructure to train and maintain the skills of corporate directors, however, has been slowly building over the last decade. There are an increasing number of director education programs. For example, the National Association of Corporate Directors, Stanford Law School, State of Wisconsin Investment Board and University of Wisconsin, Harvard, University of Chicago, Wharton, TIAA-CREF Institute, Kennesaw State University, University of Delaware Corporate Governance Center, and other groups now sponsor director training programs.<sup>17</sup> However, the cultural expectation, and the legal requirement, that directors avail themselves of these opportunities has been lacking.

That may well be changing. The proxy voting advisor, Institutional Shareholder Services (ISS), recently unveiled a program to accredit boardroom education programs for the purpose of awarding additional credit, when determining the corporate governance quotient rating of that company's board, to directors who attend them.<sup>18</sup> ISS takes the quotients into consideration when evaluating proxy issues for its voting recommendations to institutional investor clients. In addition, new listing standards proposed by Nasdaq and the NYSE contain continuing director education components.<sup>19</sup> These developments should encourage board members to develop their skills and foster a greater sense of professionalism.

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<sup>17</sup> See Jonathan D. Epstein, *Traveling Training Programs Is Proposed in Wake of Major Corporate Scandals*, NEWS J., Sept. 22, 2002, § E (Business), available at 2002 WL 22881692 (discussing various director training programs and their recent popularity); see also Paul D. Lapidus, *A Robust Market for Director Education*, DIRS. & BOARDS, Sept. 22, 2001, available at 2001 WL 19160328.

<sup>18</sup> ISS provides corporate governance quotient (CGQ) ratings for all companies in the Russell 3000 Index. CGQs are developed with use of a database covering seven core governance categories: board structure and composition, charter and bylaw provisions, applicable state laws, executive compensation, financial performance, director and officer stock ownership, and director education. CGQs allow shareholders to assess a company's relative corporate governance profile compared to other index and industry peer group companies.

<sup>19</sup> See Corporate Governance Rule Proposals, *supra* note 3. In addition, Nasdaq has proposed listing standards that would require continuing director education. See Press Release, Nasdaq Stock Market, Inc., Nasdaq Takes New Actions on Corporate Governance (July 25, 2002), available at [http://www.nasdaqnews.com/news/pr2002/ne\\_section02\\_141.html](http://www.nasdaqnews.com/news/pr2002/ne_section02_141.html).

Institutional investors could also improve the effectiveness of director training by participating in boardroom education programs themselves. This is one way to provide a quality control check on such programs and to increase the dialogue and understanding between directors and shareholders. For example, the State of Wisconsin Investment Board, CalPERS, the TIAA-CREF Institute, and others co-sponsor and participate in the Directors' Summit,<sup>TM</sup> which is held annually at the Fluno Center for Executive Education, University of Wisconsin in Madison.<sup>20</sup> These conferences have been cited as instrumental for building stronger boards and stronger companies.<sup>21</sup>

### C. *Replacing Ineffective Directors*

The most challenging task for shareholders in the twenty-first century is likely to be one that they rarely attempted in the days before Enron—changing membership of the board. In order to provide effective checks and balances on management's control in the American system of corporate governance, however, shareholders have little choice. The corporate structure is premised on the supposition that directors represent and owe a fiduciary duty to the shareholders.<sup>22</sup> Enron clearly illustrated that when directors are unwilling or incapable of playing an active fiduciary role, shareholders face an increased level of risk.<sup>23</sup> For institutional investors with large portfolios that are broadly diversified or indexed, the only way to deal with this increased risk is to replace the directors with board members who will be more effective.

Current roadblocks to replacing ineffective directors are cultural, as well as legal, financial, and practical. Shareholders have historically been wary about undertaking efforts to replace ineffective directors. Events of the last year may, however, have created the impetus needed to overcome this reluctance. Some initial systemic changes could also help get things started. For instance:

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<sup>20</sup> See Michael T. Harris, *Boot Camps for Boards*, CHIEF EXECUTIVE, Jan. 1, 2002, available at 2002 WL 9628973.

<sup>21</sup> See *id.*

<sup>22</sup> *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (citing *Loft, Inc. v. Guth*, 2 A.2d 225 (Del. Ch. 1938), *aff'd*, 5 A.2d 503 (Del. 1939)).

<sup>23</sup> See PERMANENT SUBCOMM. ON INVESTIGATIONS, THE ROLE OF THE BOARD OF DIRECTORS IN ENRON'S COLLAPSE, S. REP. NO. 107-70 (2002) (describing how the Enron Board failed).

The SEC and Department of Labor could provide interpretive guidance to mutual funds and pension funds confirming the circumstances under which efforts to replace ineffective directors constitute a proper purpose for the expenditure of fund assets;<sup>24</sup>

Provisions of SEC Rule 14a-8(i) could be changed to open up the company's proxy for inclusion of alternatives to management's candidates when the dissidents have an appropriate level of shareholder support; and

Institutional investors could develop their own stable of qualified director candidates or establish relationships with firms that have executive search capabilities to locate appropriate candidates to run against ineffective directors.<sup>25</sup>

Where shareholders are being harmed by ineffective directors, large investors need to bite the bullet and begin to run alternate candidates. Some institutional investors, like Franklin Mutual Advisers and Iridian Asset Management, have already successfully run alternate candidates.<sup>26</sup> More examples of mainstream institutional investors successfully putting new blood on boards are needed. Additional successful attempts to run alternative candidates would help overcome current institutional investor fears about doing something different.<sup>27</sup> In

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<sup>24</sup> See, e.g., Employment Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1104(a)(1) (2000) (requiring that an ERISA pension fund's assets be expended "solely in the interest of the participants and beneficiaries and—(A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries"). While attempts to improve the performance of boards in which pension fund assets are invested would seem to be a proper purpose for the expenditure of trust funds, some fiduciaries might be reluctant to support an alternate slate of candidates due to an abundance of caution about whether such an expenditure would be allowable.

<sup>25</sup> Ideally, shareholders and company nominating committees might cooperate in retaining an executive search firm to independently identify qualified board candidates with the desired qualifications.

<sup>26</sup> Franklin Mutual Advisers and Iridian Asset Management proposed a dissident slate of three directors, at ICN Pharmaceuticals, that was elected on a three-to-one margin. See *3 Outsiders Are Elected to the Board of ICN*, N.Y. TIMES, May 30, 2002, at C2. The NACD notes that contested board elections continue to grow, with insurgent investors' nominees winning majority votes at nearly half of the 20 contested elections that came to proxy votes at meetings in the first three-quarters of 2001. Dissident shareholders also gained additional seats on 17 boards during the 2001 proxy season, after threatened proxy fights were settled. See NAT'L ASS'N OF CORPORATE DIRS., *supra* note 10, at 2.

<sup>27</sup> The fiduciary standard to which most institutional investors are held encourages trustees to stay within the range of actions taken by other institutional investors. For example, the fiduciary standard that applies to most private pension

addition, the more often shareholders act to replace ineffective directors, the more likely nominating committees will cooperate in finding better board candidates in the first place.

Other initiatives focused around elimination of ineffective directors may also help to improve the quality of corporate boards. If implemented, the following might help to protect or enhance shareholder value:

Establishment of requirements that directors own and continue to hold (without hedging or transfer of ownership risk) a significant amount of company stock during and after their term;

Imposition of term limits to encourage fresh ideas or get rid of co-opted directors;

Proxy reporting on the track record (e.g., involvement in lawsuits, awarding excessive executive compensation for poor performance) of a director at other companies where he or she is also on the board;

Establishment of limits on the number of other boards a director may contemporaneously serve on to ensure sufficient time is devoted to company matters;

Splitting the positions of CEO and chairman or providing for the appointment of a lead independent director where the positions are combined;

Requiring that the board conduct some sort of self-evaluation, in addition to evaluation of the CEO and senior management, at least annually;

Mandating a report to the shareholders on the status of management succession planning to provide internal candidates for top management positions when a transition is needed;

Withholding votes for re-election of directors on compensation committees where the CEO's compensation package is excessive and company peer group adjusted performance has lagged over the long term;

Requiring disclosure of individual directors' votes on important issues, such as executive compensation, option expensing,

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funds requires trustees to use the same "care, skill, prudence, and diligence" that others "acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B) (2000).

retention of auditors, waiver of conflicts, installing poison pills, and making merger decisions; and

Adjusting director compensation to adequately reward the board for devoting the necessary time and effort to company matters.

Of all the initiatives that shareholders could pursue, those that relate directly to strengthening the board of directors appear to be the most compelling. They are the shareholders' most direct means of establishing a healthy counterbalance to management's influence over the board.

#### CONCLUSION

After the corporate governance failures represented by Enron and its progeny, shareholders need to rethink their priorities. The maximum shareholder impact on preservation and enhancement of value over the long term should result from a focus on corporate governance research, director training, and replacement of ineffective board members. The events of the last year have shown the damage that can occur when shareholders take their eyes off the board and fail to play their role as part of the checks and balances in America's corporate governance system.

