

# THE CORPORATE GOVERNANCE

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## ALLIANCE DIGEST

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Published by: John M. Nash and Eleanor Bloxham. (John M. Nash is the founder of the corporate governance movement for independent directors, as founder, in 1977, and President emeritus of the National Association of Corporate Directors. Eleanor Bloxham is a pioneer in the area of economic value management and its application in good corporate governance, and founder and President of The Value Alliance. Both Eleanor and John are Principals of the Corporate Governance Alliance.)

### COMPENSATION COMMITTEES PUT ON NOTICE

Not only do audit committee members need to be independent minded, Chief Justice of the Supreme Court of Delaware E. Norman Veasey has said that corporate directors could be held legally liable if they fail to act in an independent fashion when setting executive pay and that courts could view bad judgment regarding pay and a lack of a strong, clearly defined decision making process as a breach of the fiduciary duty of good faith. (WSJ)

### THE ROLE OF THE CHAIRMAN AND CEO

Splitting the role of Chairman and CEO is making inroads and is expected to be included as part of the recommendations by the Conference Board's Blue-Ribbon Commission on Public Trust and Private Enterprise which will urge public corporations to consider a split. (FT, WSJ) Though small in number, the following companies have announced their intentions to split the roles: Chubb, Pathmark, Wintrust Financial Corp, Closure Medical Corp and Medtronic Inc. Advocating a split is not new and was first recommended by Harold Williams during his tenure as SEC Chief (1977-1981) and advocated by John M Nash in the early days of the independent directors' corporate governance movement.

### VULNERABILITIES

A new survey by British American Business and Peppercom reported

weaknesses in corporate processes that could create liabilities for directors. Nearly 20% of the entire group of 300 US and UK executives said their companies have taken no steps at all to ensure corporate integrity and preparedness for potential exposure. Only 27 % say their corporations are conducting any research to ferret out vulnerable areas and 62% said no company could be really sure that its financial stability is protected. One important difference: while UK executives were generally confident that their corporations are not open to scandal, US executives disagreed. (CFO Magazine)

### AUDIT COMMITTEE RULES

The SEC adopted rules requiring all audit committee members of US companies be independent or face delisting. (The SEC allowed exceptions to the independence rules for foreign companies to conform to local laws that permit employees and non board members to serve on audit committees.) Former CEOs and those affiliated with corporate suppliers (such as banks) would be allowed to be considered independent. (USA Today, WSJ, FT) Some firms are voluntarily adopting stricter independence standards. The higher standards protect directors and the corporation from the implication of lack of independence and potential liabilities that might result.

### PERSONNEL AT SEC AND ACCOUNTING OVERSIGHT

As rule making at the SEC continues, despite his resignation, Pitt's influence is felt as he continues to lead the Commission's deliberations on Sarbanes-Oxley. (Washington Post) Charles Niemeier was appointed as acting head of the new accounting oversight board to replace William Webster who had resigned last year. (Washington Post, NY Times, WSJ)

### WHAT'S NOT IN THE NEWS

As audit committees implement the Sarbanes-Oxley requirements for confidential employee access, there is little discussion of the larger requirement that "each audit committee shall establish procedures for the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters." Because this requirement requires procedures regarding issues raised by anyone (customers, press, investors, analysts, credit rating agencies, suppliers including accountants and consultants, and so on) and not just employees, it represents both an opportunity (and a challenge) for audit committees to review their accessibility, processes, and information flows.

### WHAT'S COMING UP NEXT

SEC decisions and studies on the role of rating agencies, disclosure by mutual funds of their proxy votes, the services auditors can perform (including tax functions), and whether lawyers will be required to whistle blow.

### QUESTION FOR YOU: CFOs and AUDIT COMMITTEES

There are murmurings in some quarters that to protect the CFO from an unethical CEO, the CFO should report to the Audit committee and some suggest be hired by the Audit Committee. We would like to hear your views. Do you think this would be a good idea? Please email [ebloxham@thevaluealliance.com](mailto:ebloxham@thevaluealliance.com) with your views and we will (anonymously) share readers' votes and opinions with you.

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