

# SHAREHOLDER INVOLVEMENT IN CORPORATE AFFAIRS

**S**hareholder involvement in the affairs of the corporations held in their portfolios—whether as institutional, fiduciary, or individual investor—has clearly and definably been accelerating since the recent spate of corporate scandals began to seriously erode the trust existing among shareowner, senior management, and corporate boards. Shareholder advocacy for change has long been with us; the recent dramatic increase in investor activities reflects a serious erosion of trust and more widespread support for shareholder activism.

The causes and effects of the breakdown in the relationship between issuer and shareholder often are the following: negative headlines and seamy revelations that drive declining public trust in corporate management and boards; lack of trust in the financial reporting and disclosure practices of public companies, which creates increased demand for dramatic change in corporate policies, practices, and behaviors; unwanted management behaviors that bring about more direct shareholder involvement in the affairs of the company. Welcome to the Age of the Shareholder Revolt.

Trust between corporation and shareholder is critical; the capital markets depend on investor trust for their long-term stability, liquidity, depth and breadth of capital base; and, ultimately, for determining the cost of capital for issuers. In the United States, estimates are that 100 million Americans are in some way invested in the capital markets—directly, through investment accounts, retirement accounts, pension

plans, trusts, and endowments, etc. When the popular public and investor opinion turn against corporate leaders—as polls show has been happening—media, regulators, and advocates will frequently impose dramatic changes on the issuer community.

The current half-decade-long erosion of trust in corporate America is a very serious consideration for all capital market players, including investors. Throughout the debate leading up to passage of the comprehensive package of statutes known as "Sarbanes-Oxley" (SOX), and in the months since its passage into law in July 2002, "restoring investor trust" has been an important and underlying theme for proponents and defenders of SOX.

## Public demands for corporate reform

After the collapse of the dot-com market bubble, and financial collapse of a few bad apples—Enron, WorldCom, et al.—the long-standing demands for reform set out by a relatively small number of total shareholders began to be seriously addressed by companies themselves, by institutional investors (responding to their reform-minded peers), and by numerous federal and state regulatory agencies. Some of the suggested reforms were adopted voluntarily, by corporations and institutions, and by leading self-regulatory organizations (SROs) such as the New York Stock Exchange. Many reforms have yet to be widely adopted.

Where self-regulation was deemed to have failed, government legislators, regulators, or prosecutors stepped in. Self-regulation failed for accountants and auditors: the remedies included strict oversight of auditing practices by the SOX-prescribed Public Company Accounting Oversight Board (PCAOB); a greatly strengthened and more independent Financial Accounting Standards Board (FASB); and less influence for

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the accountants' professional organizations and even state regulators. Only two standard setters will now shape accounting rules: the FASB and Securities and Exchange Commission (SEC).

Public policy aimed at restoring or shoring up investor trust can be seen not only in SOX provisions but also in the predecessor regulation, Reg. FD for disclosure; in enhanced NYSE- and NASDAQ-listed company rules; in the stiffening of sentencing for corporate fraud by the US Sentencing Commission; in the highly publicized prosecutions of New York State Attorney General Eliot Spitzer; in proposed rules issued by the FASB, and more.

### **Shareholder advocacy—shaping corporate affairs**

Some argue that the most important factor in advancing reforms and changing the way corporations are governed is that of shareholder advocacy. Governance and social issue advocates have long been seeking various types of reforms in corporate behavior. We could cite the emergence of the two important shareholder "movements" back to the 1970s—one focused on corporate governance (how the corporation is managed and a basket of financial issues), and the other whose advocates focused on social justice and related societal issues (such as diversity, civil rights, human rights, etc.). Victories were achieved by advocates in both movements in such events as the coalescing of public and private interests in bringing an end to South Africa's apartheid system (social responsibility) or in making demands for greater financial performance at major companies—such as IBM, American Express, Westinghouse, Sears, Kodak—which brought about CEO changes at these and other companies (corporate governance).

In the investor advocacy arena, to apply a metaphor, these two powerful streams of shareholder activism—"corporate governance" and "social responsibility"—have progressively been merging into a mighty roaring river, one that sweeps people and business organizations along and carves out new pathways to the sea. The sea, continuing this metaphor, is of great importance to financial executives, being the place

where critical "sea changes" are now occurring in such areas as corporate disclosure, transparency of finances, easier and less costly shareholder access to the entire proxy voting process, direct nomination and election of directors, networking and building support for shareholder-sponsored proxy resolutions, rising student activism on college campuses focused on changing corporate behavior through focus on endowments, utilization of the global Web to develop activist networks and alliances to target public corporations, and more.

An observation worth mentioning that captures this merging of shareholder interests comes from the description for a new management guide, *A Strategic Approach to Corporate Governance*, published by the UK's Research and Markets Ltd: "Corporate governance has expanded in scope since its early focus on the financial aspects of business direction, so that it now embraces new areas of accountability, including those of corporate social responsibility and the environment."

While corporate governance has been a concern to certain investors for decades, in recent years the term has entered the public lexicon—for example, President George W. Bush announced his sweeping "corporate governance reforms" in his January 2002 State of the Union address to Congress. Just a few months later, Congress passed Sarbanes-Oxley and pronounced that the corporate governance reforms would address critical issues in corporate accounting and financial reporting.

### **Confusing terminology?**

At times the terminology and nomenclature applied to the "two powerful streams of shareholder advocacy" can be confusing to those inside the corporate suites. Just who is creating the new environment for financial reporting and corporate-shareholder relations that are of importance to executives? What are their demands? For starters, the terms generally applied in both the US and in the UK and European Union countries to encompass shareholder advocacy now include the following:

- Corporate governance
- Corporate social responsibility (also known as "corporate citizenship")

- Social investing or socially responsible investing (SRI)
- Faith-based investing (as practiced by religious organizations)
- Investing for social justice (including community investment)
- Conscious capitalism
- Values investing, ethical investing, conscious investing, etc.

To provide insight into the trends affecting corporate America as shareholder advocacy expands, among the important changes taking place are these:

- Traditional governance advocates have been steadily moving toward support of some traditional positions of the social investing community. The governance silo is changing. Unlikely alliances have been springing up in recent years. The 1980s corporate raiders are back—as better-governance advocates. "Everyone" can join hands and back shareholder resolutions calling for majority votes for board elections, nonstaggered board terms, separation of Chair and CEO posts, and (this season's hot issue) overcompensation of executives for underperformance.
- The social investing community—which is global, broad and varied, and not always easy to precisely define—has steadily been moving toward some of the positions and issues promoted by the governance advocates. Some social investors have long focused on governance issues as well as social issues. A well-governed company, they reason, is a business that will be socially responsible and will "do no harm" to the environment, etc. The activism is intended to strengthen the company for the long term. More important to some is the change in behavior to avoid sweatshop supply chains or use of child labor. And positive improvements such as issuing plans and roadmaps for dealing with global warming and pollution. These issues are on the proxy ballots at dozens of companies this year.
- Instead of only acting to deny capital to "poorly behaving" corporations, social investors have been increasingly "screening in" potential investments

for their portfolios and selecting companies that are deemed socially responsible; positive as well as negative screening is now a given for many social investors.

- Both governance and social investment advocates are developing powerful tools and resources—and recruiting armies of allies—to advance their causes. A growing cottage industry of consultants, experts, service providers, and governance rating agencies are working for public employee pension funds, money management firms, SRI mutual funds, labor unions, and even individual investors—these include Institutional Shareholder Services, The Corporate Library, KLD Research and Analytics, GovernanceMetrics, Glass Lewis, and others.
- Both types of advocates (and "hybrids" embracing both governance and social issues) are employing the latest and smartest technologies to advance their causes—private Listservs and password-protected websites abound in both communities. Corporate leaders might be astonished to learn the depth, breadth, and nature of the information being made available "outside the walls" of the company and being shared among dozens, hundreds, even thousands of people. Often, corporate employees are passing information on to the activist networks.
- Both governance-focused and social issues advocates are being aided by recent, new, or proposed changes in the SEC and other regulatory agency rules that will add transparency to corporate finances and operations and create greater access for advocates to (say) the corporate ballot box. "Corporate democracy" is the battle cry for shareholder advocates; let's bring democratic rule to the institutions that at times have the greatest influence on our lives.

The following are current examples of how these trends play out in the public issues arena—the 2006 proxy voting season now underway will be shaped by some of these



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forces, which will also affect future proxy contests.

**Observations from the SRI professionals.** Addressing the sometimes confusing terminology of "values-based investing" and asking "Who is socially responsible," Boston-based KLD Research and Analytics President Peter Kinder commented in December 2005 on the differences of "socially responsible investing," "corporate social responsibility," "corporate accountability," and "values-based investing." While there is no standard definition of SRI—something Mr. Kinder "has no problem with"—he believes that social investors share the intent to act responsibly with their money and to try to achieve social objectives while reaching their financial aims. He references the Interfaith Center on Corporate Responsibility's (ICCR) pragmatic approach (for 35 years) on issues ranging from apartheid to strip mining.

In January 2006—addressing the issue of "social screening" for selecting portfolio investments—Peter Kinder observed that 35 years after the launch of the first socially responsible investing fund (Pax), social screening as a practice does remain controversial. Mr. Kinder describes screening as "the application of a criterion to differentiate companies in the investment process," with social screening being "a non-financial [qualitative] criterion that relates to business activities or products."

He further explains that social screens identify characteristics and behaviors the investor will find useful, relevant, or tolerable—such as employee relations and corporate governance practices. Hours of analysis (the day-to-day business of his KLD organization) is required for many companies, while other companies can be excluded quickly—no tobacco or gaming companies wanted in the investor's portfolio, for example.

**Insights for the CFO.** At year-end 2005, *CFO* magazine's Articles Editor Edward Teach also explored corporate social responsibility (CSR) in an essay for *CFO* magazine, and pointed out that in his Google search, there were 4.6 million hits for "corporate social responsibility" and much less—2.3 million—for "shareholder value." In the US and abroad, consumers, non-governmental organizations (NGOs), and

socially responsible investors are prodding companies to pursue a variety of social and environmental goals. In his article—"Two Views of Virtue—The corporate social responsibility movement is picking up steam. Should you worry about it?"—Mr. Teach included reviews of two new books on CSR and SRI and interviewed the authors; the following were the reviewed books:

- *Corporations and the Public Interest: Guiding the Invisible Hand*, by Steven Lydenberg (a chief investment officer of Domini Social Funds); and
- *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*, by David Vogel (professor of business ethics at University of California's Haas School of Business).

Steven Lydenberg interview highlights: CSR is a major secular development driven by a long-term reevaluation of the role of corporations in society. SRI is driven mostly by the retail [mutual funds] in the US but institutional investors are becoming more involved. In 2004, CalPERS announced it would invest up to \$500 million in environmentally screened stock funds.

Mutual fund manager Lydenberg sees influences on both CSR and SRI coming from (1) guidance from the International Organization for Standardization (ISO), bringing an ISO 26000 standard to corporations in 2008 for social responsibility; (2) the SEC's 2003 rule that mutual funds disclose their proxy policies and annual votes; (3) the increasing popularity of corporate sustainability reports; (4) increased disclosure on social, economic, and environmental performance.

Professor David Vogel interview highlights: Not as committed to the importance of SRI, the professor acknowledges the influence of CSR, and its growing importance for some companies, but believes what really matters is its relative importance vis-a-vis other factors that affect shareholder value.

Of SRI, Professor Vogel notes that in 2004, conventional socially screened funds accounted for less than 2 percent of total assets in mutual funds and recent claims that \$2.2 trillion is invested in socially responsible investments are "greatly exaggerated." Environmental issues are where

the strongest case for CSR can be made, he suggested.

### **Socially responsible, or unacceptable?**

#### **Wall Street begins to care**

In January 2006, *CFO* magazine's Edward Teach then advised readers that financial officers at most firms now insist that their companies are upstanding corporate citizens, and that some investment banks are looking to test the validity of those claims. Citing a UBS 2005 research report—"SRI Equity Research: why try to quantify the unquantifiable?"—among the "inappropriate behaviors" that Wall Street is looking at are carbon emissions, pollution, product safety, human-rights violations, waste disposal, bribery and corruption, respect for privacy, and copyright theft.

Now, Goldman Sachs and Citigroup Global Markets have added SRI teams to their sell-side research departments, following the UBS report's suggestions that social risk is tantamount to business risk and should be considered in valuing a business. (Michael Moran, a vice president with Goldman Sachs, and Shirley Knott, a director of UBS, both said that interest from institutional investors, mutual funds, and hedge funds is fueling Wall Street's "curiosity" about socially responsible investing.)

**The carbon disclosure project survey of corporate policies on climate risk.** About carbon: In September 2005, the London-based Carbon Disclosure Project (henceforth, the Project) released results from its latest annual survey of the world's largest corporations. This year, 60 percent of the US companies questioned by the Project responded (compared to 42 percent a year earlier). Growing numbers of US companies are shaping emission plans, says the Project, and preparing for future state or federal government regulations. And companies are preparing for 2012, when the Kyoto regulations could be expanded to developing countries.

Important investment note: US institutional investors are signing on to the Project; for example, the California public employees pension fund—CalPERS—is cited as a participant in the Project.

**"Green is good," says Forbes.com.** "The Green Revolution" is sweeping the heirs to

the industrial revolution, said Forbes in its online forum. On September 21, 2005, US Senate Majority Leader Bill Frist announced a plan to have the US government establish public goals and verification standards for US companies to reduce their energy and water use, increase recycling, and cut down on greenhouse gas emissions.

The SEE Change Initiative (SEE)—for "society, environment, and economy"—was developed by the powerful Business Roundtable, led by the chairs of DuPont (DD), Dow Chemical (DOW), Sun Microsystems (SUNW), AEP (AEPI), Xerox (XRX), and Office Depot (ODP). (The Roundtable is an organization whose members are the CEOs of America's largest corporations.)

SEE will establish voluntary environmental goals and more transparency for publicly announcing progress toward meeting goals. Government will receive statistics needed to negotiate the next round of Kyoto treaties. In 2005, General Electric (GE) Chairman Jeffrey Immelt announced the global, enterprise-wide "Ecomagination" campaign. FedEx (FDX) is working with Environmental Defense to develop sustainable initiatives (such as a fleet of hybrid delivery trucks using 50 percent less fuel and emitting 90 percent less).

**Faith-based shareholder advocacy on issues.** In January, GE agreed to resolve a 10-year dispute with a powerful coalition of faith-based investors to disclose information regarding the clean up of polychlorinated biphenyl (PCB)-related matters—including the pollution of New York's Hudson River. Members of the Tri-State Coalition for Responsible Investment (Tri-CRI) pressured GE for a decade—through proxy resolutions and in meetings with the company—to reveal how much money the company was spending on PCB issues (from 1990 to 2005, as GE delayed cleanup of the river and other sites).

The two-dozen-member Tri-CRI coalition is one of many coalitions that is a member of the Interfaith Center on Corporate Responsibility (ICCR), a New York City faith-based organization with 275 member groups—including major national denominations, religious communities, pension funds, endowments, and hospital corporations. ICCR members represent a market portfolio exceeding \$110 billion. ICCR



**COMPANIES ARE PREPARING FOR 2012, WHEN THE KYOTO REGULATIONS COULD BE EXPANDED TO DEVELOPING COUNTRIES.**



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activism often harnesses hundreds of billions of dollars in additional equity holdings in its 300 or so annual shareholder campaigns. In 2005, the groups won 27 percent support for a resolution requesting PCB expenses disclosure by GE.

The company agreed at the start of the proxy season to disclose these expenses as the faith-based investors and their allies returned for another contest this year. GE disclosed that it spent nearly \$800 million in the 1990-2005 period on PCB-related issues. In response, the Tri-CRI coalition group members agreed to withdraw members' 2006 shareholder resolutions.

Observed Sister Patricia Wolf, executive director of the ICCR and a former executive director of the Tri-CRI coalition: "General Electric deserves credit for finally coming clean about the costs of its stalling tactics on PCB contamination, but the reality is that \$800 million would have gone a long, long way to cleaning up the problem if... not wasted on PR, lobbying, and courtroom delaying tactics . . . . GE needs to commit now to get the job done ... as expeditiously as possible." (GE's PR, lobbying, and legal expenses totaled \$122 million of the \$799 million disclosed.)

Another ICCR campaign underway to bring about changes in corporate behavior and practices is aimed at Wal-Mart (WMC). ICCR member organizations had filed seven resolutions with the company at press time (up from four in 2005), asking for reports on sustainability, equal opportunity for women and people of color, product safety, and pay disparity between executives and workers. (Altogether, shareholders had filed eleven resolutions at press time, including the United Brotherhood of Carpenters asking for majority vote for directors and the Teamsters' union seeking disclosure of political contributions.)

At year-end 2005, ICCR members had filed 299 resolutions at 147 companies (with 11 withdrawn by sponsors and 7 challenged at the SEC by companies); these addressed such governance and social issues as the following:

- Environmental and sustainability issues
- Human rights—worker rights
- Health (including pharmaceutical company issues)

- Inclusiveness—diversity
- Financial
- Military—violence
- Corporate governance

ICCR recently launched an investor research resource—"EthVest," the online ethical investment database—to help financial analysts, money managers, investors, corporate executives, academics, and other shareholder advocates track its proxy contests in real time and to research past year contests (back to 1993).

**Wal-Mart in their sights, states press for health benefits.** As the shareholder activists targeted Wal-Mart to urge reforms and demonstrate support for their demands in proxy contests, legislators in thirty states were busily preparing legislation (for the spring legislative season) that would require large corporations to increase spending on employee health insurance. This grassroots movement started in Maryland (where the legislature overrode the governor's veto) and has spread to Connecticut, Kansas, Florida, Colorado, and other states.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is behind the initiative, which—while not mentioning Wal-Mart—has placed the company squarely in the sights of state lawmakers.

### **Disclosure: The SEC calls for transparency on pay**

In mid-January the US Securities and Exchange Commission, responding to widespread investor complaints about lack of disclosure and transparency regarding corporate executive pay, set out a proposed set of rules that would bring sweeping reforms—another critical sea change—to the way US companies provide the total compensation of their senior executives.

Analyzing the comprehensive and sweeping disclosure rules for its members, the National Association of Corporate Directors (NACD) reported that the SEC proposal means that by proxy season 2007, at least four important changes could be made in corporate disclosure practices:

- Total pay would be clearly presented by the company, adding up all amounts in the "Summary Compensation Table";

- Fair value of equity awards, stock options, grants, etc., would be clearly disclosed in the table, at current values;
- "Other pay" would be collected in the "All Other Compensation" column of the table; and
- Two separate equity award tables would be produced, one for pay-for-performance awards, the other for all other equity awards and grants.

Comprehensive and total disclosure would address compensation for the four highest paid executives, including stock options, perquisites, severance payments, retirement plans, and director compensation. NACD advised directors that given the importance of executive compensation matters to shareholders, companies will "want to take a fresh look at their disclosure" to (1) see if practices match current SEC rules and (2) begin moving toward the 2007 disclosure regime as a best practice. (Many corporations are already voluntarily disclosing "total" executive compensation. The NACD's landmark report—*Report of the NACD Blue Ribbon Commission on Executive Compensation, 2002*—has been a guide on "compensation philosophy" for directors and executives and was an external influence on the proposed SEC rules.)

Commenting on the proposed rules, Lucian Bebchuk (director, Program on Corporate Governance at Harvard Law School) applauded the proposals in a *Wall Street Journal* essay and said that investors should be pleased. He reported that a recent study conducted by Robert Jackson and himself found that by taking disclosed information and performing analysis, a picture of total compensation can be derived. For example, the Harvard Law School researchers determined that CEO pension plans had a median value of \$15 million; that the ratio of a CEO's pension value to the total compensation during his or her service had a median value of 34 percent; and that including pension values would have increased from 15 percent to 39 percent the median percentage that salary-like annual payments now comprise of a CEO's total compensation over time.

Mr. Bebchuk concludes that the coming disclosures on executive compensation "will highlight that much work remains to be

done to fix our executive compensation system."

**Vanguard funds adopted new benchmark for its SRI fund.** In October 2005, the large US mutual fund family, Vanguard, changed its primary benchmark for the Vanguard Calvert Social Index (VCSIX) to the FTSE4Good US Select Index. The index measures the performance of companies that meet globally recognized corporate responsibility standards; Vanguard's fund will be a narrower version of the index.

FTSE4Good focuses on three areas—environmental sustainability, universal human rights, and positive relations with stakeholders—and includes 700 US Companies. Excluded: tobacco, alcohol, adult entertainment, firearms, gambling, nuclear power, and companies that violate fair-labor practices or equal opportunity standards.

**Public employee pension funds "pin target on CEO pay."** So said *USA Today* in December 2005 as ten large pension funds from the United States, Canada, and Europe joined forces to urge the SEC to look more closely at CEO pay ("pay-for-performance" among top executives). (The SEC proposal was the subject of hearings in January.) The pension funds cited research showing that CEO pay at many Russell 3000 companies bears no relationship to how well the companies are performing. At sixty of the worst-performing companies, some \$769 billion in market value was lost over five years—while aggregate pay for the top five executives at the companies was \$12 billion (MVC Associates International research findings).

**Power to the people: Amnesty International launches shareowner advocacy.** In August 2005, the unit of the global Amnesty International organization in the United States (AIUSA) announced a program to encourage individual investors to tell institutional investors to vote (and how to vote) the shares held for them in "street name" or broker name. AIUSA wants individual investors to know that brokers, mutual funds, pension fund trustees, and others holding their shares may not be voting their interests on social, environmental, and corporate governance issues. The organization launched "Share Power" to inform investors on their "constituent power" to lever-



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age accountability for human rights with investments made in their name.

Two companies were immediately targeted for increased visibility: Chevron (CVX) and Dow Chemical (DOW) "for their policies on issues of importance to AIUSA," including the following:

- AIUSA will file shareholder resolutions at Chevron to address health and environmental concerns (and the "legacy" of Texaco operations in Ecuador);
- At Dow, the organization is asking for a report on Dow's "accountability" for the 1984 Bhopal, India tragedy (at a plant owned by Dow's subsidiary, Union Carbide Corporation (UCC)) and the lingering effects of the event for Dow/UCC.

Amnesty International created an online forum to track the shareholder campaigns and where proxy-voting records of institutions will be posted.

**Watch the popular culture.** A new book in the popular Megatrends series entitled *Megatrends 2010: The Rise of Conscious Capitalism* could broaden consumer awareness of social investing: William Baue, online editor for SocialFunds.com, reviewed the book and noted that the author, Patricia Aburdene, includes socially responsible investing as one of the seven important trends for the future—a "huge topic" in her view with SRI fusing "free market economics with social responsibility and spiritualism," in the words of Mr. Baue. Ms. Aburdene attempts to explain SRI at micro-economic and macroeconomic levels.

The books of the 20-year-plus Megatrends series usually sell well and end up on bestseller lists and tend to get quoted by a good number of journalists and others. Mr. Baue predicts: "The [book's] chapter on socially responsible investing . . . will likely drive greater interest in SRI. The Megatrends books have become a kind of self-fulfilling prophecy: they not only identify significant trends, but also spur them."

**Finally—mainstream recognition of the Sisters of Charity.** On a Saturday cable television broadcast of a financial markets and investing program in early January, a panelist on one show recommended buying Wal-Mart—the stock is a bargain, in his view. Another panelist, a respected money

manager, countered that Wal-Mart is not a bargain. The past has caught up with Wal-Mart, and the game is over. The company may be the largest in America but it bought market share with cheap labor and exploited workers, is being sued by female workers and others, and now the public is onto Wal-Mart, and its troubles are growing. The panelist then concluded, "Why, even the Sisters of Charity are after them!" (This organization is one of the ICCR members sponsoring a resolution at Wal-Mart in 2006.)

### What of the future?

The momentum for urging reforms on public corporations appears at least by weight of media coverage to be on the side of the shareholder advocates. Companies are not bound by majority votes on shareholder-sponsored resolutions, but increasing numbers of companies have been engaging their critics in dialogue and reaching compromise on issues as momentum builds in the annual proxy contests (witness the GE January disclosure of PCB expenses).

Some companies are "toughing it out" and refusing to deal with critics, or are conducting campaigns to discredit their advocacy on issues. There are additional forces at work that could further tip the balance toward shareholders; just one worth citing is the requirement that mutual funds ("investment companies") reveal their corporate governance policies and annually report on the actual votes for each company in their portfolio.

More changes in SEC rules, state laws (which govern corporations domiciled there), judicial decisions, and campaign methodology may further drive reforms.

It is worth the time for corporate finance professionals to study trends in shareholder advocacy to be better equipped to deal with shareholder demands and to meet shareholder expectations. Given the momentum gained since 2000 by the advocates, it is a matter of time before your company is involved in a proxy contest.

One change that may still happen is the issuance of an SEC rule to give more access to shareholders to the nomination process for board members. MFS Investment Management Chairman Robert Pozen recently



wrote an opinion piece to suggest two new rules to "empower" shareholders—he examined the complex proposed rule that would allow shareholder nominations for directors not receiving a majority of votes (subsequently tabled by the SEC as too complex and controversial) and suggested this:

- One new SEC rule could address uncontested elections where a majority of votes are withheld from a company's nominee; and
- Another could help reduce the costs of separate proxy solicitations for alternative candidates.

Mr. Pozen set out suggestions for enabling more shareholder participation in proxy voting and especially the nomination of directors—"with two simple rules," he notes, "SEC could give shareholders a voice electing directors who represent them on the boards of public companies."

This may be one of a number of proposals coming forth in 2006 as shareholder advocates and their supporters and advisors explore the path to greater "corporate democracy." •

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## REFERENCES

Aburdene, P., *Megatrends 2010: The Rise of Conscious Capitalism* (Hampton Roads Publishing, 2005). For William Baue's review of this book on [www.socialfunds.com](http://www.socialfunds.com), see [www.socialfunds.com/news/article.cgi/1893.html](http://www.socialfunds.com/news/article.cgi/1893.html). This website is also a very rich source of social investing information.

Amnesty International: information on its online forum for shareholder advocacy is available at [www.amnestyusa.org/business/sharepower/](http://www.amnestyusa.org/business/sharepower/).

For Lucian Bebchuk's commentary, see the *Wall Street Journal*, January 18, 2006 (page A10). Mr. Bebchuk coauthored (with Jesse Fried) *Pay Without Performance: The Unfulfilled Promise of Exec-*

*utive Compensation* (Harvard University Press, 2004).

Carbon Disclosure Project: information for US companies (responding to the survey) is available at [www.cdproject.net](http://www.cdproject.net).

Farre 11, G., "Pension Funds Pin Target on CEO Pay," *USA Today* (December 16, 2005).

Interfaith Center on Corporate Responsibility (ICCR): information is available at [www.iccr.org](http://www.iccr.org). For information on EthVest, the comprehensive online social and ethical investing database, see [www.accountability-central.com](http://www.accountability-central.com) or email [kcynar@accountability-central.com](mailto:kcynar@accountability-central.com). Included on the site are copies of newsletters and news releases, including the January 10, 2006 release on the General Electric campaign.

Kinder, P., "Social Screening: Still Controversial; Still Misunderstood," is available by linking to <http://www.kld.com/mediacenter/> and then clicking on "KLD Newslines Archive" (January 2006). Peter Kinder's various newsletter essays on social investing can be found on this website. Mr. Kinder's newsletters may be especially helpful to financial executives striving to understand social investing, social screening, and related topics.

National Association of Corporate Directors (NACD): its commentary on the SEC proposals is available at [www.nacdonline.org](http://www.nacdonline.org). NACD reports are available for order at <http://www.nacdonline.org/publications/default.asp>.

Pozen Ft., "Democracy by Proxy," *Wall Street Journal* (November 30, 2005). This article suggests two new rules for empowering shareholders in the context of the SEC's proposed rules for proxy contests.

Sarbanes-Oxley Act of 2002: for more information of the establishment of the PCAOB under Section 101 of the Sarbanes-Oxley Act, see the Sarbanes-Oxley Reporter Service, H 1014.

The Securities and Exchange Commission's press release on its proposals on executive compensation disclosure (rules) is available at <http://www.sec.gov/news/press/2006-10.htm>.

*A Strategic Approach to Corporate Governance* (Ashgate Publishing, Jan. 2006); information regarding its publication is available at [www.researchandmarkets.com/reports/c31189](http://www.researchandmarkets.com/reports/c31189).

Teach, E., "Two Views of Virtue," *CFO* magazine (December 2005); also by Mr. Teach: "Socially Unacceptable," in the "Topline" of *CFO* magazine (January 2006). Both are available online at [www.cfo.com](http://www.cfo.com).