



# Private Sector Opinion

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## Corporate Governance: A North American Perspective

### Foreword

The recent wave of US corporate governance failures prompted a round of legal and regulatory reform which has attracted worldwide attention. The cross border impact of Sarbanes-Oxley has been direct as it extends the reach of US regulation beyond home territory primarily in the case of foreign companies with US listings and US public debt, and US companies with foreign operations. There has also been indirect impact as reformers in other markets have been considering the US example as a way to raise standards in corporate governance and thereby strengthen capital markets. The debate about the proper role of law and regulation in corporate governance reform has played out against complaints from some sections of the business community with respect to the cost of implementing certain reforms set forth in the legislation, and a surge in new listings on overseas markets in comparison to US listings.

Ira Millstein's essay puts the debate into a wider context for the US. The missing link here is shareholder rights, which are not addressed in Sarbanes-Oxley. Shareholders in the US have comparatively weaker rights than shareholders in some other countries, thereby making it difficult for shareholders to hold boards to account without prohibitive cost and effort.

While the US has drawn much of its legal governance practice from the common law system, under the default provisions for incorporation under Delaware law, where the bulk of large US companies are registered, shareholders can only vote to approve directors put forward for election and cannot vote against. In addition, shareholders in many companies may not have the right to call a general meeting and issue a binding resolution, even if a majority of shareholders vote in favor of the resolution. However, under shareholder pressure, more and more companies have effectively opted out of the default plurality vote standard by adopting a majority vote standard either through charter or bylaw amendments, or director resignation policies. In addition, the SEC is reviewing shareholder access to the nomination process, and proxy distribution via the internet.

Ira Millstein draws upon several decades of experience as corporate counsel to many leading US corporations. He comments that "corporate governance in the US, if it is to result in a meaningful shift in power, will need to evolve to give share-

holders greater rights....” This is an important message for overseas markets considering how best to learn from recent developments in the US. It raises the question of whether private sector reforms rather than regulation should be the prime focus. Certainly there is evidence that market discipline can be more efficient, especially where the institutional capacity for enforcement may be weak. Notably, the European Commission has concluded that the way forward is not to attempt to introduce top-down regulation on corporate governance, but to focus upon enhancing shareholder rights across its member countries. This course of action poses its own challenges. If shareholders are to be fully empowered with the rights to hold boards directly accountable, what about the accountability of institutional investors to their beneficiaries? The balancing principle is responsibility, and one which Millstein accepts is necessary to ensure effective governance by investors. The message is that law and regulation must be seen to complement, and to facilitate market action, but not to substitute for it. That is a valuable insight from one of the world’s most experienced and thoughtful corporate governance practitioners.

Anne Simpson  
Executive Director  
International Corporate Governance Network

# Corporate Governance: A North American Perspective

**By Ira M. Millstein, Senior Partner, Weil Gotshal & Manges LLP; Senior Associate Dean, Corporate Governance, Yale School of Management; and Chair Emeritus of the Forum's Private Sector Advisory Group**

*This article is based on a speech delivered by Ira M. Millstein at the Toronto Club on 23 May 2006, and originally appeared in the 2006 ICGN Yearbook*

## The Power Shift

Corporations everywhere have the same basic legal features. And, corporations with dispersed ownership are owned by investors, managed by managers and directed by boards. But that's where the similarities end.

Each governance system has a distinct "balance of power" and set of tradeoffs among shareholders, boards and managers.<sup>1</sup> In some jurisdictions, the power tilts to the managers, but in other jurisdictions, it tilts to the shareholders. It may not be a dramatic imbalance, but even a tipping of the scales makes a difference. Where the balance of power lies impacts how specific laws and regulations deal with the agency problems arising from the corporate form. No work has demonstrated this better than the treatise, *The Anatomy of Corporate Law ("The Anatomy")*, published in 2004 and authored by seven outstanding, internationally well-known and respected academics.

The Anatomy demonstrates that **in the US the dominant agency problem is the manager-shareholder conflict and "the most powerful corporate constituency is professional management."**<sup>2</sup> It goes on to demonstrate that this balance of power in favor of management plays out in a variety of laws and regulations that are "relatively unfriendly to the interests of the shareholder class by international standards." This dynamic is reflected in matters such as shaping corporate policy and decision-making through the shareholder meeting, defending against takeovers, consultation and proxy solicitations, executive compensation, shareholder voting on selection and removal of directors, and the like.<sup>3</sup>

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<sup>1</sup> Reinier r. Kraakman et.al, *The Anatomy of Corporate Law* (2004) p 67.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid* at pp 47, 67–70.

## Tilt to Managers

The tilt to managers rather than shareholders was not an accident, the authors of *The Anatomy* suspect; but rather, in the US, is because of “the considerable political power of corporate managers.”<sup>4</sup> Not only does this seem obvious and intuitive, but a new book—*Political Power & Corporate Control* by Peter A. Gourevitch and James Shinn—likewise concludes that the balance of power is the result of political power and custom; it varies around the world, with the tilt toward different places depending on who has political power, and the demands of society.

The authors of *The Anatomy* also correctly conclude that in the US, managerial dominance of the system probably started and continued because things were going well for the economy and corporate America.<sup>5</sup> They note that **shareholders have little incentive to exercise their latent legal powers during periods of prosperity and rapidly rising share prices** because it would appear their interests are being looked after.

**In periods of stress, however, managerial dominance becomes tested and reduced** somewhat. We have had such periods in the past, and we are currently coming through a period of the serious crisis in confidence which resulted in the Sarbanes Oxley Act of 2002 (SOXA) and a host of new regulations, listing requirements, criminal trials and sentences, best practices, box-ticking intermediaries and other tests of managerial dominance. This, together with the rising concentration of ownership in institutional investors leads me, and others, to wonder whether we will witness a true shift in power away from the managers over to institutional investors as a class. Or will the institutions behave as shareholders of the earlier dispersed class tended to do, that is, fall asleep?

This is the future this article will peer into.

We can look at the two core elements of corporate governance to see what a difference in the locus of power might mean, and whether shifting is worth the candle.

**Two core elements are needed to ensure that power resides in those who own the company—the shareholders:**

- First, and most importantly, shareholders would have the power to select and remove directors. Without this power, shareholders are stripped of their right to choose who should run the company on their behalf. They can only at best, today, ratify the board's choices.
- Second, the board would have the power to hire and remove management. Without this power, the board cannot ensure that those to whom it has delegated

<sup>4</sup> *Ibid* at p 49.

<sup>5</sup> *Ibid* at p 70.

responsibility for running the day-to-day affairs of the company are, in fact, running it in the best interests of the shareholders.

## The Core Elements in the US

Up until a few years ago, neither of the core elements was present. Boards did not seem to be aware that they had the responsibility to know enough about the company through greater involvement and to replace non-performing managers before a disaster struck. And shareholder rights with respect to director selection and removal were either extremely costly to exercise (for example, proxy solicitation) or virtually non-existent (for example, removing directors and, up until relatively recently, the ability to communicate with other shareholders).

**The past few years have seen the balance of power shift from management alone, to management and the board.** Boards began awakening in the 1980s, in the face of takeover threats and lawsuits, and have come into their own since the Sarbanes-Oxley reforms and the like crystallised how corporate governance was always intended to work.

This change occurred both voluntarily and by law and regulation. As a result, the responsibility of the board to remove management in a timely fashion is now widely recognised and accepted. In this way, the second core element—the power, indeed responsibility, of the board to hire and timely replace management—now seems to have become embedded in the US system of corporate governance. We should hope that it remains so.

However, the first and most important core element—**the power of shareholders to select and remove directors—is not embedded in the US system.** Its absence has become glaring. Recent reforms such as mandated independent nominating committees for listed companies,<sup>6</sup> voluntary adoption by boards of governance guidelines with respect to majority voting, and the forthcoming SEC proposal to change the proxy solicitation rules to allow use of the internet and thereby reduce costs,<sup>7</sup> are a good start but do not go far enough. More would be needed.

Corporate governance in the US, if it is to result in a meaningful shift in power, will need to evolve to give shareholders greater rights of selection and removal. The conditions for this evolution are now ripe—**ownership is increasingly concentrated in the hands of institutional investors and away from dispersed shareholders.** It is possible that power with respect to board composition could shift to institutional investors and away from management and the board (although power to run the company day-to-day will, and must, remain with management).

<sup>6</sup> NYSE Listed Company Manual, Section 303A(4).

<sup>7</sup> SEC Release 34-52926, Internet Availability of Proxy Materials (proposed Dec. 15, 2005).

But will this shift actually occur? This depends on politics and power, as Shinn and Gourevitch explain. Their well-researched case studies of particular countries demonstrate the shifting alliances amongst the main players which have resulted in progress or resistance to change. Managers, shareholders (block, minority or diffused) and labor will ally or dis-ally, as their self interest dictates, for progress or to change resistance. And their power to do so and achieve results will depend on their ability to affect the local politics involved in changes to the law; hence knowledge of motivations and of local politics is required to complete an explanation as to whether and how such a shift in power—if any—will occur.

**The shift in power to shareholders is meeting stiff resistance from the business community.** Managers and boards will not easily relinquish their ability to control the board's membership and we cannot deny the existence of their political vote. The community beyond managers and boards may also resist the power shift—and they would have cause to do so, unless institutional investors demonstrate that they can, and will, exercise shareholder rights in a responsible fashion. A couple of developments relating to shareholder rights that are in the pipeline are relevant to this discussion; first, majority voting; and, second, a bill that has been introduced into Congress to increase shareholder rights with respect to executive compensation.

## The Power Shift to Shareholders—Majority Voting and Compensation

Majority voting is becoming standard and is gradually replacing the plurality system in both the US and Canada. In the US, the recent history of the shift can be summarised as follows:

- The trend towards majority voting began with Pfizer's board policy requiring directors who receive a majority of withheld votes to tender their resignation, with the board to decide whether or not to accept the resignation.
- The trend has continued with companies such as Intel amending company bylaws to embed majority voting into the company's governing documents.
- Majority voting may be moving from board policies and bylaws into articles of incorporation; for example, shareholders of Progress Energy approved a management proposal to change the company's articles of incorporation to require a majority vote for election of directors at the company's annual meeting on 10 May 2006.
- A bill was introduced into the Delaware General Assembly on 16 May 2006 (Senate Bill No. 322) to amend the Delaware General Corporation Law to enable shareholders to introduce an irrevocable change of bylaws on director elections and provide for an irrevocable resignation of directors who fail to get a requisite number of votes. This bill has been referred to the Judiciary committee in the Senate.

In the US, shareholder proposals seeking majority voting in director elections have averaged 56.8% of votes cast so far this proxy season at thirteen firms that had not adopted a director resignation policy or other majority voting alternative prior to issuing proxy statements. Of those 13 firms, majority voting proposals won support at 11 (the strongest showing was a pair of 67% votes at Marathon Oil and Sprint Nextel in April; the weakest were 27% at Pepsi and 32% at Paccar, both of which have significant insider shareholdings).

In Canada, the Canadian Coalition for Good Governance noted in its 2005 annual report that “Canadian companies must be encouraged to amend their by-laws to allow shareholders to vote for or against individual directors” and “[l]arge institutional shareholders should consider introducing ‘shareholder resolutions’ to force companies to move to majority voting.”<sup>8</sup> In addition, Institutional Shareholder Services (“ISS”) in Canada adopted a new policy for 2006 in support of majority vote initiatives.<sup>9</sup>

**Majority voting strengthens shareholder rights by attributing weight to shareholder votes against directors, which in turn gives shareholders a louder voice in the boardroom:**

- By voting against (or threatening to vote against) the re-election of directors involved in decisions that shareholders disagree with; for example, voting against members of the compensation committee as a way of voicing disapproval with respect to an excessive compensation package.
- Shareholder votes against a director or directors on the proposed slate—can be effective. To some, this does not go far enough—it still is a veto action; it does not give shareholders the positive right to put people on the slate. Certainly with a threatened veto, investors can bargain for a candidate, and this may be enough—the system appears to work in the UK.
- Shareholders can also act by voting for or against, shareholder proposals.

**But shareholder proposals are generally of limited use in forcing change.** This is for two reasons:

- First, SEC regulations provide that shareholder resolutions cannot relate to issues of “ordinary business”<sup>10</sup> and can only address issues which can be justified from the perspective of returns. For example, a resolution on discrimination in the workplace must be couched in terms of promoting the company’s overall long-term prosperity for it to be permitted to be included in the proxy.

<sup>8</sup> Canadian Coalition for Good Governance, *Second Annual Report: Working to Improve Governance in Canada* (2005) p 7.

<sup>9</sup> Institutional Shareholder Services, *ISS Canadian Corporate Governance Policy 2006 Updates* (2005).

<sup>10</sup> SEC Exchange Act, Rule 14a-8(i)(7).

- Second, shareholder resolutions are precatory and therefore cannot bind the company, even if a majority of investors vote in favor of the resolution. Companies often ignore majority votes on shareholder proposals with respect to secular issues (for example, lavish share options).

Shareholder proposals are thus of limited use in relation to certain issues that many shareholders care about, such as executive compensation. Excessive compensation is of obvious concern to shareholders—it impacts their own bottom line. A recent study by Harvard's Lucian Bebchuk and Cornell's Yaniv Grinstein found that the aggregate compensation paid to the top five executives of US public companies represented 10.3% of company profits in 2001–2003—up from 4.8% of company profits in 1993–1995—with the amount paid to executives totaling roughly \$350 billion.<sup>11</sup> The issue is especially stark when comparing executive compensation to factory floor pay—the conventional wisdom 50 years ago was that the appropriate differential between executive pay and the average worker should be 60 to 1; some now say it is 300 or 400 to 1.<sup>12</sup>

**Compensation is the real hot button issue.** Outsized compensation has been problematic in the US for a while, and Canadian compensation is also attracting more attention with average total compensation for CEOs at large Canadian companies increasing 39% in 2005 to C\$4.3 million. This increase has been driven primarily by gains from exercised stock options, with actual salaries and bonuses increasing by 6% (Report on Business survey of 247 of the 279 companies in S&P/Toronto Stock Exchange composite index).<sup>13</sup>

**Only the board can fix executive compensation, by aligning shareholder interests and paying for performance, rather than manipulated results**—and at a level that is not excessive. Performance measures should be economic and long-term in focus, for example, based on ROI, ROE, EVA or Tobin's Q. A focus on share price and guidance should be avoided—share price, because it impacts the value of options and stock held by management and can be more easily manipulated; and guidance, because it puts pressure on management to “make the numbers” so as not to disappoint analysts.

Compensation is a board problem, but the board is not stepping up fast enough—this indicates that maybe boards have not escaped noblesse oblige and management domination, even though they are more empowered than ever before. Boards

<sup>11</sup> Lucian A. Bebchuk & Yaniv Grinstein, *The Growth of Executive Pay*, Oxford Review of Economic Policy 21 (2005) p 283.

<sup>12</sup> “Driven by mega-grants of stock options, the total pay of the average CEO soared from 42 times that of the average worker in 1980 to 280 times in 2004”: John C. Bogle, *The Battle for the Soul of Capitalism* (2005).

“The ratio of CEO pay to average worker pay increased from 301-to-1 in 2003 to 431-to-1 in 2004. By contrast, in 1990, the average large company CEO made just 107 times the pay of the average production worker”: Institute for Policy Studies & United For a Fair Economy, *Executive Excess* (Aug. 30, 2005) 1.

“[T]he conventional wisdom [50 years ago] was that the appropriate differential between the take-home pay of CEOs of major corporations and workers on the minimum wage was 60 to 1. (The minimum wage was \$1,500 a year, and top executives' salaries about \$90,000.) Today, with the take-home pay (salary and bonuses only) of CEOs averaging \$2.6 million, that differential is 260 to 1. With options and other incentives included, the differentials would be twice as large”: Winthrop Knowlton, *Not so Lucky Next Time?*, Remarks at Harvard Business School Class of 1955 50th Reunion (June 4, 2005).

<sup>13</sup> Institutional Shareholder Services, *Global Roundup: Canadian CEO Pay Increases 39 per cent*, Governance Weekly (May 11, 2006).



have not put their houses in order and this has led to a movement to more directly empower shareholders to pick up the slack. Congressman Barney Frank has proposed legislation that would empower shareholders by giving them a direct vote on compensation.<sup>14</sup> Congressman Frank's bill would require public companies to include an "Executive Compensation Plan" in the annual report and accompanying proxy solicitations and would disclose any and all types of compensation paid or to be paid to top executives, as well as compensation policies for top executives (performance measures or targets, and whether they were met in the preceding year). The Frank bill, if enacted, would require the Executive Compensation Plan to be approved by shareholders.

Congressman Frank's proposal provides another indication of further federal intrusion, encouraged by the SOXA, into what has traditionally been a state matter—governance. One law requiring shareholder approval on a substantive issue of governance—compensation—could lead to others. And, who knows where it will stop. This concern is exacerbated by a Republican SEC chairman who, in a recent op-ed piece in the *Wall Street Journal*, explicitly backed Sarbanes-Oxley "as is," and urged greater disclosure of almost everything, particularly compensation.<sup>15</sup>

Even if Congressman Frank's bill never becomes law, there will most assuredly be pro and con votes—precatory or not—on compensation when the SEC's compensation disclosure becomes effective.

The lesson for "business" should be "do it yourself." Boards should take heed and start reigning in excess. Failure may result in more federal legislation of some kind, and it will lead, in any event, to more shareholder proposals—which, if they garner substantial numbers, can prompt boards to act.

**Electing directors by majority vote, and the compensation issue, will put power critical to good corporate governance into the hands of shareholders.** How they use that power in those instances, as well as with respect to precatory proposals, is an emerging issue for all of us.

### Responsible Use of Voting Power by Institutional Investors

**Responsible exercise of shareholder rights requires institutional investors to commit to exercising judgement—not following the decisions of others by rote**—with respect to voting decisions. Some institutions, such as CalPERS and TIAA-Cref, vote responsibly; but many other institutions do not.

Institutional investors are required to vote but many follow the recommendations of proxy advisory firms rather than exercising their own judgment because it is a cheap

<sup>14</sup> H.R.4291, 109th Cong. (2005).

<sup>15</sup> Kimberley A. Strassel, *The Weekend Interview with Christopher Cox: Full Disclosure*, W.S.J. (May 20–21, 2006) A8.

and easy alternative, and carries a low-risk—mandatory voting has led to mechanical voting. These recommendations are often made on the basis of overly rigid standards created by the proxy advisor and applied without analysis as to the unique circumstances of individual companies; for example, the ISS definition of “independence” goes further than law and best practices, and fails to take into account the circumstances and needs of individual companies.<sup>16</sup>

Responsible voting requires judgement. **Judgement cannot be outsourced.** Deciding who should be on a board of a particular company and what compensation an executive should receive, requires institutional investors to use their own judgement in analysing the particular circumstances of that company, and the needs and expectations of their varied beneficiaries. **The more appropriate role for intermediaries is to provide information to investors about a company, but not judgements** applicable to all shareholding institutions and their beneficiaries.

Notwithstanding the above, there still is a substantial market for proxy advisory services. Institutions seem to want their advice and follow their recommendations, instead of making their own judgments and voting responsibly. This is an abdication of significant responsibilities.

The International Corporate Governance Network (“ICGN”) is examining why institutions seem to have abdicated more responsible voting. The ICGN is updating its Statement of Shareholder Responsibilities (first published in 2003) to address the importance of internal governance amongst institutional investors.

Peter Montagnon, Chair of ICGN's Shareholder Responsibilities Committee notes the following on the ICGN Web site:

“If they are to exercise their responsibilities, they must be equipped to manage conflicts of interest, set high standards of transparency, command the right levels of expertise and resource and have a balanced organisational structure, which permits them to carry out their obligations to beneficiaries.”<sup>17</sup>

Institutional investors cannot manage their own internal conflicts without identifying them first. Here, sunlight can reveal their inhibitions and be an effective tool for bringing about change in their habits. **Institutions should be required to disclose conflicts within the institution that may distort their motivations and incentives.** John Bogle's new book, *The Battle for the Soul of Capitalism* (2005), discusses conflicts in depth, for example:

<sup>16</sup> Institutional Shareholder Services, *ISS US Corporate Governance, 2006 Policy Updates* (2005) 3.

<sup>17</sup> International Corporate Governance Network, *Consultation on New Statement of Shareholder Responsibilities*, at [http://www.icgn.org/organisation/src\\_consultation.php](http://www.icgn.org/organisation/src_consultation.php).

- Corporate pension fund managers who are retained by plan sponsors may find themselves acting in the best interests of the corporation rather than the beneficiaries who have entrusted their retirement savings to the plan.
- Trustees of public and union pension plans may seek to use their position to further political interests at the expense of beneficiaries, for example, by using beneficiary funds to engage in litigation that is politically motivated or to further “union” issues which may not bear on governance.
- Institutional investors may be reluctant to sue to recover fraud-related losses where those lawsuits would be launched against other institutions which with they have a relationship.
- Banks that engage in proprietary trading may inappropriately support those activities using information they gather from clients in relation to trading intentions.<sup>18</sup>

**Institutions should also be required to disclose how they vote**—including whether they rely on a proxy advisory firm and the extent of such reliance—and their business relationships with companies in their portfolio whose proxies they exercised.

**Shining a spotlight on conflicts should result in institutions becoming more aware that they are supposed to be voting for the welfare of their beneficiaries**, rather than their own. And that they are required to vote responsibly by using judgement, rather than following a herd.

But what if this across-the-board amplified voting by institutions does not occur? Then, special interest groups may emerge to become the “activists.” Such groups would be active only with those companies whose activities affect their individual interests—and not necessarily for the common good (for example, union funds).

Majority voting on director elections provides a platform to pursue special interests through threatened removal of directors. But even so, unless the special interest group can muster support by building coalitions through reciprocal agreements with other special interests, or garner the support of proxy advisors, the special interest can be neutralised by the actions of other stockholders.

**My concern is that the greater number of shareholders will continue to rely on proxy advisory firms as a low cost-low risk way of complying with mandatory voting requirements.** And then the proxy advisors can carry the day for or against the interest group—which can be a good or bad thing for the company. But it is a “thing” which demonstrates the potential power of the proxy advisor.

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<sup>18</sup> Adrian Cadbury & Ira M. Millstein, *The New Agenda for ICGN: Discussion Paper No. 1 for the ICGN 10th Anniversary Conference, London (July 2005)* p 18–19.

**Proxy advisors, although private companies, have become too big and potentially influential to not themselves require disclosure.** Something must be done about these unregulated proxy advisors. At a minimum, proxy advisory firms should be required to disclose:

- What their standards are.
- How those standards are set and by whom.
- Conflicts of interest and ethical issues within the firm and between the firm and clients; such disclosure could be along similar lines as that required of auditors, for example, disclosure of relationships between proxy advisory firms and institutions they advise.

Even were those disclosures required, institutions might still outsource the substance of the vote. More is needed for us to reach a stage when institutions think for themselves. At Yale, we are looking into ways of facilitating a “market in corporate governance” that would spread out information of use to institutions in individually deciding how to vote, including information with respect to how other institutions are voting and the suggested disclosures outlined above.

We envision such a platform being owned by funds in a mutual arrangement and operating as a sort of public utility or clearing house of information. No recommendations would be provided—institutions would be required to make up their own minds. We are working on developing this idea further and will seek input from intermediaries and institutions along the way.

## Conclusion

We are currently seeing a shift in power to institutional investors. But this shift in power should not occur until such a shift is credible in the eyes of the marketplace—for with power comes responsibility. What will it take to make the shift credible? How can we be assured that institutions will use individual judgements (which is how a marketplace, even of ideas, is supposed to work), as opposed to becoming a “herd”?

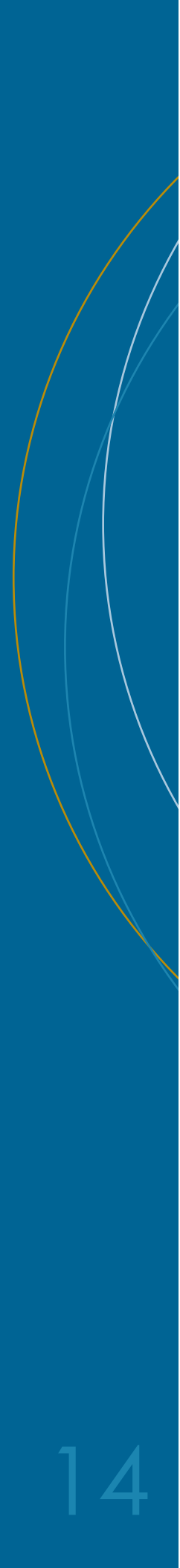
There are important steps that institutional investors can take to enhance the credibility of their decision-making

The mechanics of their decision-making processes should be transparent, and judgement and decision-making processes should not be outsourced. Conflicts should be disclosed and addressed. Without these steps, investors are unlikely to vote responsibly. And power will shift not to shareholders, but to the intermediaries that advise them.

## About the Author

Ira M. Millstein is a senior partner at the international law firm Weil, Gotshal & Manges, where, in addition to practicing in the areas of government regulation and antitrust law, he has counseled numerous boards on issues of corporate governance, including the boards of General Motors, Westinghouse, Bethlehem Steel, WellChoice (*fka, Empire Blue Cross*), the California Public Employees' Retirement System (CalPERS), Tyco International, The Walt Disney Co., and the New York State Metropolitan Transportation Authority. Mr. Millstein is a member of the board of the World Trade Center Memorial Foundation, the entity charged with overseeing the fundraising and construction of the World Trade Center Memorial, and related museums and cultural facilities located at the World Trade Center site. He previously served as pro bono counsel to the Board of Directors of the Lower Manhattan Development Corporation, the agency overseeing the redevelopment of Lower Manhattan. Most recently, he was appointed Chairman of the New York State Commission on Public Authority Reform by Governor George Pataki.

In addition to his active legal practice, Mr. Millstein is the Senior Associate Dean for Corporate Governance and the Eugene F. Williams Jr. Visiting Professor in Competitive Enterprise and Strategy at the Yale School of Management. In November 2006, the School of Management renamed its Corporate Governance Center in honor of Mr. Millstein, naming it the Millstein Center for Corporate Governance and Performance. Mr. Millstein is the Chairman Emeritus, having served as Chairman from 1999–2005, of the Private Sector Advisory Group to the Global Corporate Governance Forum founded by the World Bank and the Organization for Economic Cooperation and Development (OECD). He served as Chairman of the OECD Business Sector Advisory Group on Corporate Governance in 1997–1998 and Co-Chair of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (sponsored by the New York Stock Exchange and the National Association of Securities Dealers) in 1998–1999. In 1997, he was appointed by Vice-President Gore and Prime Minister Chernomyrdin to the U.S.-Russia Capital Markets Forum Working Group on Investor Protection. In 1996, Mr. Millstein chaired the National Association of Corporate Directors' Blue Ribbon Commission on Director Professionalism. He formerly has served as: Chairman of the Board of Advisors of Columbia University's Center for Law & Economic Studies' Institutional Investor Project; Chairman of the New York State Pension Investment Task Force; Adjunct Professor at New York University School of Law; and Fellow of the Faculty of Government at Harvard University's J.F.K. School of Government.



An Elected Fellow of the American Academy of Arts & Sciences, Mr. Millstein is a frequent lecturer and author on corporate governance, antitrust, and government regulation. In 2001, he received the first Award for Excellence in Corporate Governance by the International Corporate Governance Network. In June 2006, the *National Law Journal* named Mr. Millstein to its list of 100 Most Influential Lawyers in America. Included among his many publications are: *The Recurrent Crisis in Corporate Governance* (co-author, Palgrave, 2003; paperback by Stanford University Press, August 2004); a trilogy of articles published in *The Business Lawyer*—"The Evolution of the Certifying Board" (1992), "The Professional Board" (1995), and "The Responsible Board" (1997); *The Limits of Corporate Power* (co-author, MacMillan, 1981); *The Impact of the Modern Corporation* (co-editor, Columbia University Press, 1984); *The Battle for Corporate Control: Shareholder Rights, Stakeholder Interests, and Managerial Responsibility* (contributing author, New York University, 1991); and "Can the Board of Directors Help the American Corporation Earn the Immortality It Holds so Dear?" in *The U.S. Business Corporation: An Institution in Transition* (contributing co-author, American Academy of Arts & Sciences, Ballinger Publishing Co., 1988).

A graduate of Columbia Law School, Mr. Millstein is a Life Trustee and former Chairman of the Board of the Central Park Conservancy, and Chairman of the Board of Overseers of the Albert Einstein College of Medicine. He serves on the Advisory Council of Transparency International, and is a former member of the Yale School of Management Advisory Board. He is Governance Counsel to the Board of the National Association of Corporate Directors (NACD) and a former board member. He is a former Chairman of the Antitrust Law Sections of both the American Bar Association and the New York State Bar Association.



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