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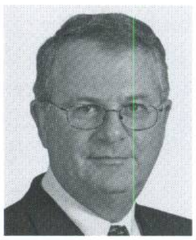

SOX Compliance: A True Tale of Discovery

By John B. Zumwalt, III

Uncovering a long-running embezzlement scheme made this chairman a true believer in the value of independent audit committees, internal investigations, and Sarbanes-Oxley.

The Sarbanes-Oxley Act of 2002 has meant expensive new accounting controls and auditing practices for many corporations. Are they worth the cost and extra work? For The PBSJ Corporation, the answer is a resounding yes!

When I moved into the position of chairman of The PBSJ Corporation in January 2005, I saw nothing but success ahead for us. Our company was ranked 25th among the nation's top 500 engineering design firms by *Engineering News-Record,* and we had just posted our 29th year of consecutive profitability with an annual revenue of $560 million. Our backlog was strong, and our employee turnover rate was one of the lowest in our industry. But our world was about to change. In March of 2005, we discovered that we were the victim of a long-running embezzlement scheme that we might never have known about had we not taken a proactive stance in applying some of the good governance and transparency practices advocated by the Sarbanes-Oxley Act of 2002 (SOX).

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Your Voice

Viewpoint: How Directors Can Become Truly Independent

By Joseph Fichera and Michael L. Noël

The current national commitment to strengthening responsible corporate governance has been born in scandal, mandated by law, endorsed by influential leaders, and ratified by public opinion. The reform impulse has been especially notable in the changing role of independent directors. They are now more immersed in administrative, regulatory, and financial detail; expend more time and energy on board committee work; and otherwise perform an array of oversight functions beyond the ken of their immediate predecessors.

This heightened level of participation has often had the salutary effect of promoting the integrity of legal advice and accounting conventions. However, the capacity of boards to follow through on their responsibility has been hampered by institutional constraints that compel them to rely almost wholly on management as a source of facts and analyses, which may be designed primarily to persuade, rather than to inform.

If boards are to maximize the benefits of their expanded role they will require access to data and interpretation well beyond those that are now available to them. For instance: 1. The board could charge itself with generating such information as deemed appropriate; 2. It could, on occasion, seek the advice of consultants with specialized knowledge; or, 3. It could appoint in-house staff to monitor and augment information from management.

In view of the limitations of any of these approaches, the best alternative could be: 4. The creation of an independent agency free from conflicts of interest, and dedicated solely to providing directors with accurate, reliable knowledge about the range of issues over which they preside.

The Board as Provider

Directors already are required to digest an array of presentations and data between meetings. They can seldom spare the time to mine the literature emanating from Wall Street, campuses, and think tanks, or to master the intricacies of research methodology or findings. Given the growing burdens of board membership, it would be unrealistic to assign directors the daunting task of generating requisite information to enable independent judgment.

The Board and Consultants

The flow of information circulated to directors is mainly provided and controlled by management and reflects management's distinct perspectives. The result is that board meetings do not fully expose immediate and imminent financial, organizational, and ethical issues confronting the company and its industry. Ad hoc relationships with consultants—attorneys, auditors, compensation experts—are often indispensable, but they are no substitute for a permanent complement of "on-hand" advisors who identify the board as their client. Consultants ordinarily are engaged in response to crises, address narrowly defined issues, and do not provide the larger context for the board's continuing responsibilities.

The Board and In-House Staff

Any arrangement that provides independent information to directors is better than none. That said, there is good reason to reject the seemingly straightforward but unrealistic solution of assigning this function to an in-house staff that would be answerable to the board. An in-house staff that was truly independent from management would require too much oversight by the board. On the other hand, if the staff were administered by management, it would lose its independence, creating conflicting lines of authority and other potential conflicts of interest.

External Resources

A new corporate "best practice" could be realized by assembling a group of distinguished advisors and staff for the purpose of establishing permanent organizations dedicated to providing a company's directors with the requisite knowledge base for effective corporate governance. These organizations would serve as ongoing, independent, objective, and neutral sources of data and analysis, an external research-and-information arm of corporate boards free of conflicts of interest.

A Winning Proposition for All

The creation of a new profession devoted to the interests of independent directors would not infringe on the oversight responsibilities of the board or the operational functions of management. Rather, it would perform functions that benefit all sectors of the enterprise. For board members, this structural change would have the incidental effect of reducing pervasive anxieties about limited time, personal liability, and due diligence, while CEOs would be protected against the widespread impression that they exert excessive influence over directors. For such a plan to occur, it will take a forward-thinking board of directors and an open-minded and confident CEO to recognize that better information and analysis, along with a more informed debate, will benefit the company's customers, shareholders, and employees. ■

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Ed. Note: Viewpoints express the opinions of individual NACD members and do not necessarily reflect the views of NACD, its directors, officers, or other members.