



Speech by SEC Chairman:

"An Essential Next Step in the Evolution of Corporate Governance"

by **Chairman Arthur Levitt**

U.S. Securities & Exchange Commission

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Thank you. I very much appreciate the opportunity to be here this morning and to be in the company of many of this country's foremost thinkers and practitioners in the area of corporate governance.

We gather here today during a period in which the concept of corporate governance has attracted an unprecedented degree of public attention. A topic that not too long ago was dismissed as a fad or conjecture limited to the halls of academia has been accepted today for its relevance and underlying importance.

Scan today's headlines. Discussions of the financial crisis in emerging markets inevitably focus on the lack of corporate as well as governmental oversight. The same applies to recent high-profile financial reporting failures in corporate America.

I believe that the increasing shift to financial markets as the pre-eminent source for capital worldwide has been the driver behind this greater attention on corporate governance. In the process, more and more people are recognizing that corporate governance is indispensable to effective market discipline.

This growing consensus is both an enlightened and a realistic view. In an age where capital flows worldwide just as quickly as information, a company that does not promote a culture of strong, independent oversight risks its very stability and future health.

As a result, the link between a company's management, directors and its financial reporting system has never been more crucial. Let me, if I can, take a few moments to discuss the implications of this relationship.

Six years ago when I arrived in Washington, I wasn't fully persuaded that corporate governance should be a priority on the Commission's agenda. I felt that the issue lent itself to more of a subjective analysis rather than a more formal one. One size could never fit all. While I still very much subscribe to that premise, I have become increasingly convinced of the need to be more outspoken on this topic -- particularly when it affects the quality and integrity of the financial reporting process.

I have come to view strong corporate governance as indispensable to resilient and vibrant capital markets. It is the blood that fills the veins of transparent corporate disclosure and high-quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure. And without financial reporting premised on sound, honest numbers, capital markets will collapse upon themselves, suffocate and die.

Late last year, I announced a coordinated plan to address earnings management -- the practice of using accounting tricks to mask true operating performance. Since then, the response from corporate management -- CEOs and CFOs; investors; leaders of the public accounting profession and academia has been remarkable. I want to thank those in corporate America and the accounting profession for their willingness to step forward and address these insidious practices.

As you all know, one of the first efforts to be concluded as a result of this focus on earnings management has been the work of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees. A product of the leadership of the business community, the accounting profession, the legal profession and Wall Street, the panel's recommendations are far-ranging, meaningful and relevant to every participant in the financial reporting process.

Suffice to say, I was very much looking forward to the panel's results. I feel passionate about audit committees. For some of you, this might be the first time you have ever heard someone associate passion with a board function.

But, qualified, committed, independent and tough-minded audit committees represent true guardians of the public interest. These are the board members, who in the first instance, oversee a process that collects, verifies, and disseminates information about a public company's performance to the marketplace.

But sadly, stories abound of audit committees whose members lack expertise in the basic principles of financial reporting as well as the mandate to ask probing questions. There is no reason why every public company in America shouldn't have an audit committee made up of the right people, doing the right things and asking the right questions.

Unfortunately, the willing of strong, independent audit committees into action by a few is not enough. If we are to reach the next step in effective oversight of financial reporting and not be paralyzed by endless "what if" lamentations, then we need to move this debate forward through concrete action.

Now, some say there's no need for a vast overhaul. I couldn't agree more. Rather, this is an area that cries out for level-headed thinking and practical solutions. If we don't give boards and audit committees a realistic, but effective roadmap of how to instill a process that reinforces oversight instead of one that circumvents it, the notion of meaningful, active, and effective corporate governance will forever be just that -- a notion.

How many of us here today are prepared to say that the audit committee that meet four times a year before each board meeting is the rule rather than the exception? How many of us are prepared to say that the audit committee with every member having a familiarity in basic financial principles is the rule rather than the exception? How many of us are prepared to say that the audit committee with no personal ties to the chairman or to the company is the rule rather than the exception? And how many of us are prepared to say that the audit committee that asks tough questions of management and the

outside auditors is the rule rather than the exception?

I believe that the recommendations outlined in the report give the principal actors of sound financial reporting -- management, boards and auditors -- the tools they need to make strong and independent audit committees the rule rather than the exception. They are aimed at strengthening the independence of the committee. They seek to make audit committees more effective. They enhance accountability among the board, the outside auditors and management.

And, there are few words more reassuring to investors than accountability. It sends a clear, unambiguous message that you will not sacrifice reputation, stability and long-term growth for short-term vagaries and expectations.

In the months since the Blue Ribbon panel's recommendations were announced, a broad range of responses has been elicited -- from the positive to the constructive to the parochial. One day, it's a letter from a CEO notifying me that his company's board and Audit Committee have fully adopted the report's recommendations. The next day, it's a dire prediction -- more than a letter -- alluding to dark "unintended consequences" from a more fully engaged board.

I must confess that I'm quite surprised by the variance of opinion. I'm even more puzzled about the tone, tenor and direction of some of the arguments. I have for some time thought that if we all couldn't agree on what exactly needed to be implemented in this area, we all could agree, at the very least, that something needed to be done.

But, if you listen to some of the so-called unintended consequences of the recommendations, you'd think the panel had composed a revolutionary edict. Under this scenario, a greater delineation of specific duties leads to increased liability. In turn, committees will micromanage in order to fully assess the quality of the accounting. And, both management and auditor judgment will be second guessed, undermined and superseded.

The three-way relationship between the auditor, management and the audit committee will collapse under the weight of an inappropriate extension of the board's duties. Taken separately or as a whole, corporate governance, according to the critics, will suffer, instead of improve. As I said earlier, we've come a long way. But, I think it's clear we have a way to go.

Normally, a lot of these arguments don't really merit a point by point rebuttal. The reason is simple. They are the same, well-worn arguments we've been hearing for years. Turn back the clock to three decades ago and you'd get a bad case of déjà vu. You can't put outside directors on the board. That will undermine management. You can't impose a listing requirement for an audit committee. It will be impossible to monitor or enforce. You can't prescribe an independence standard in the make-up of a board. That's unnecessary meddling and misguided regulation. You can't define a standard of due care on behalf of a board. That will only increase the board's exposure to legal liability and decrease the quality of a board's practices. Those arguments were proven wrong in the past, and they will be proven wrong today.

While it's disappointing that some continue to tread over ground proven misguided by history and experience, I must say that, overwhelmingly, the business community has responded in a positive and constructive manner. I want to thank many of the organizations representing the accounting profession, financial management, and institutional investors for their support and their desire to put these recommendations into reality. With all of us working together, I expect to see that reality in the next few months.

Both the NYSE and the NASD appear to be on track to implement listing standards on board composition by this summer or early fall. The Auditing Standards Board, part of the AICPA, which has responsibility for implementing standards an auditor communicates with the board, also has promised action by this summer. And the SEC, I can confidently say, plans to move forward on the disclosure issues, but only after listening carefully to those commentators who have expressed fears that we could set traps for the unwary.

I can't leave here today, however, without addressing the flawed premises underlying some of the arguments you'll likely hear later today or over the next few weeks and months.

Let me speak first to the issue of legal liability -- since that seems to touch on many of the concerns enunciated. As the theory goes, audit committees that are more engaged and more active in the process by having meaningful discussions with management and outside auditors on important financial reporting issues expose themselves to greater liability. If I were an investor, I would find it hard to believe and would be terribly distressed if the law prevented my board from doing just those things.

Although I'm not a lawyer, my background as a business executive has given me, as it has probably many of you, pretty good on the job training. I understand and empathize with concerns over unjustified and frivolous litigation. It not only detracts from other commitments, but consumes time and money.

I refuse to believe, however, that more information, more transparency, and more active and diligent oversight create greater legal exposure. I refuse to believe that the clear and necessary delineation of basic responsibilities creates greater legal exposure. I refuse to believe that concern over the quality of financial reporting instead of just merely the acceptability of it creates greater legal exposure. And, I refuse to believe that the vigorous protection of the shareholder interest creates greater legal exposure. These beliefs are not based on a hope of what the law should be, but what most corporate lawyers recognize it actually is.

Look for instance at the seminal Delaware cases of Van Gorkum and the Caremark. What those boards did and did not do made all the difference. Yet, when those decisions were handed down, much of the legal commentary in various quarters predictably lamented the end of the modern corporation.

If Delaware corporate law and the SEC's own administrative actions stand for a single proposition, it is that an active, involved and educated committee or board can rest more easily at night than a board composed of directors who merely go through the motions and watch the clock.

So, when the typical refrain on legal liability is invoked, I can't help but wonder if the implicit warning is that boards should be extremely careful what fights they pick or where they should tread. Controlling exposure to unreasonable litigation risk is clearly an appropriate concern, and I don't want to minimize it. But when it's used unrealistically and impetuously to thwart board action in the interest of shareholders, it's nothing more than a red herring.

Now, I appreciate that audit committees and boards face inherent limitations on what they are able to do. I've been a director, and I know what heavy burdens you all bear. The average company today is a complex enterprise engulfed by rapid technological change and fierce global competition. You have to assess exposure to risk on an ever changing landscape.

Amidst these challenges, I also recognize the practical concern of being able to attract and retain qualified people. Board membership, particularly in a public company, is a privilege, not a line on a biography. You serve because you are committed to making a contribution, not merely to receive the benefits.

This leads me to the other major concern leveled at some of the recommendations: they will raise the burdens of audit committee membership -- frustrating the audit process and undermining management; that the judgment of part-time committee members will be substituted for the decision of full time experts.

Now, I can't believe that's what the panel had in mind. It recognized, instead, the systemic importance of justifying decisions that directly affect the quality of a company's financial reporting. That's responsible and necessary oversight. When auditors, financial management and the board engage in frank and meaningful discussions about the significant, but often gray areas of financial accounting, who would deny that the ultimate interests of the company and its shareholders are not being served?

Now, we should refine the definition of quality. But, I have a hard time accepting that discussing the quality of the accounting and asserting a belief that it satisfies GAAP translates into reviewing every line item prepared by the auditor. No one expects or wants the audit committee to involve itself in discussions that plainly should be between management and the auditor. That's not oversight. But, an audit committee actively engaged -- drawing into view the significant judgments involved and any differences in opinion -- by asking the tough questions is.

A true reading is that the panel's conclusion with respect to compliance with GAAP is based on reliance on the advice of others -- in the absence of telling red flags -- with no intent whatsoever to supplant one group's judgment for another. Since the act of forcing painful discussions out into the open often defies human nature, I can't help but find value in having meaningful public disclosure that these conversations, in fact, took place. Consistent with my desire not to create a liability pitfall for directors, I've asked Harvey Goldschmid, our General Counsel, to exercise great care in considering how to implement this proposal.

But, I believe there are baseline situations or judgments that go to the very heart of whether the accounting is sound. And those situations or judgments demand audit committee oversight. If the audit committee cannot have an independent discussion with the auditor on the quality of the accounting, then audit committee oversight is nothing more than a facade.

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Nearly thirty years ago, a broad-based dialogue began on corporate governance between the Commission, academia, the legal community and issuers. Through the years, it's been a discussion that has moved forward through fits and starts. In most cases, unfortunately, scandal and failure have been the prime motivating factors on the road to greater corporate accountability.

The Blue Ribbon panel -- as evidenced by today's event -- has provided a real opportunity for proactive, thoughtful and meaningful change. I believe it has laid a solid, action worthy roadmap from which to move forward. I say roadmap. It is not the Bible. We should debate and discuss its recommendations. Nothing is written in stone -- yet.

But, we have a wonderful opportunity in this time of relative prosperity and stability to enact a practical framework to help ensure our companies remain the most innovative, vibrant and trustworthy in the world. We can't afford to waste it. The time is now to do what's necessary to help keep America's capital markets the deepest, most liquid in the world. And, the time is now to do what's right for investors.

Thank you very much.

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Last update: 07/22/1999

 [Return to previous screen \(Speeches by SEC Officials\)](#)

 [Return to SEC Home Page](#)