

Corporate Governance (CG)

A

PERSPECTIVE

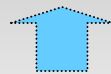
BY

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Since 1990s (GLOBAL PHENOMENA)

 HUMAN GREED

 OPPORTUNITY for GREEDY BEHAVIOUR

Sure but STEADY  in the Ethical Values DUE TO THE SPEED FACTOR (GET IT DONE YESTERDAY) SYNDROME

A SIGNIFICANT PART / ROLE IS “ THE WAY “ COMPANIES ARE

- OWNED / MANAGED. &
- RUN – Focus  SHAREHOLDER VALUE.
- TIME HORIZON – 3-5 YR's CASH IN OPTION.

CEO PAY / TOP MANAGEMENT PAY (COMP) is the KEY DRIVER FOR SUCH “ CORPORATE MISFEASANCE “ or “ CORPORATE MISDEMEANOUR’s ” Which are TAKING place FREQUENTLY and ACROSS the GLOBE

- 1970 - CEO PAY - 39 x ORD WORKER
- 1970 - CEO PAY - 1000 x ORD WORKER
(Fortunes Top 100 Cos)

PAYING via. STOCK OPTIONS have FURTHER “ FUELLED THE FIRE ” as share prices SOARED during the STOCK MKT BUBBLE and CEO / TOP MMENT wanted to CASH IN.

CONTRIBUTING FACTOR's (CI positions)

- # AUDITOR's
- # BOD stacked with CRONIES
- # INV. BANK's
- # CONNIVANCE / COLLUSION.
- # RAGING BULL MKT (1987- 2000)
- # A/C of stock OPTION's (Mark to MKT) Cost in Cos Book's and

OUTCOME HARDLY SURPRISING

- ORDINARY SHAREHOLDERS / INVESTORS (L.T. Stakeholders) w/o BOD Rep MASSIVE RIDE. Due to SUBSTANTIAL EROSION in LT VALUE / BANKRUPTCIES / MELT DOWN etc..
- PAIN to OTHER STAKE HOLDERS too.

GOVERNANCE

Greek word for 'STEERING'

Steering a Boat safely needs a Good Captain + Good Crew

CONCEPT :

“ Corporate Governance is the acceptance by management of the Inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees”

N R Narayana Murthy

CORPORATE GOVERNANCE IS

A Systemic process by which Companies are Directed and Controlled so as to –

- a) enhance their Wealth generating capacity and
- b) meet Societal expectations

CORNERSTONES

TRUSTEESHIP

Economic & Social **ROLE** discharge
EQUITOUS dealing with all **STAKEHOLDERS**

TRANSPARENCY EXTERNAL

DISCLOSURE enhances **ACCOUNTABILITY**
Appropriate balance w/o jeopardising Strategic
Interest

INTERNAL

Openness in relationship with Employees

EMPOWERMENT

Truly vesting decision making authority with the
appropriate management level required to drive
the Co. fwd.

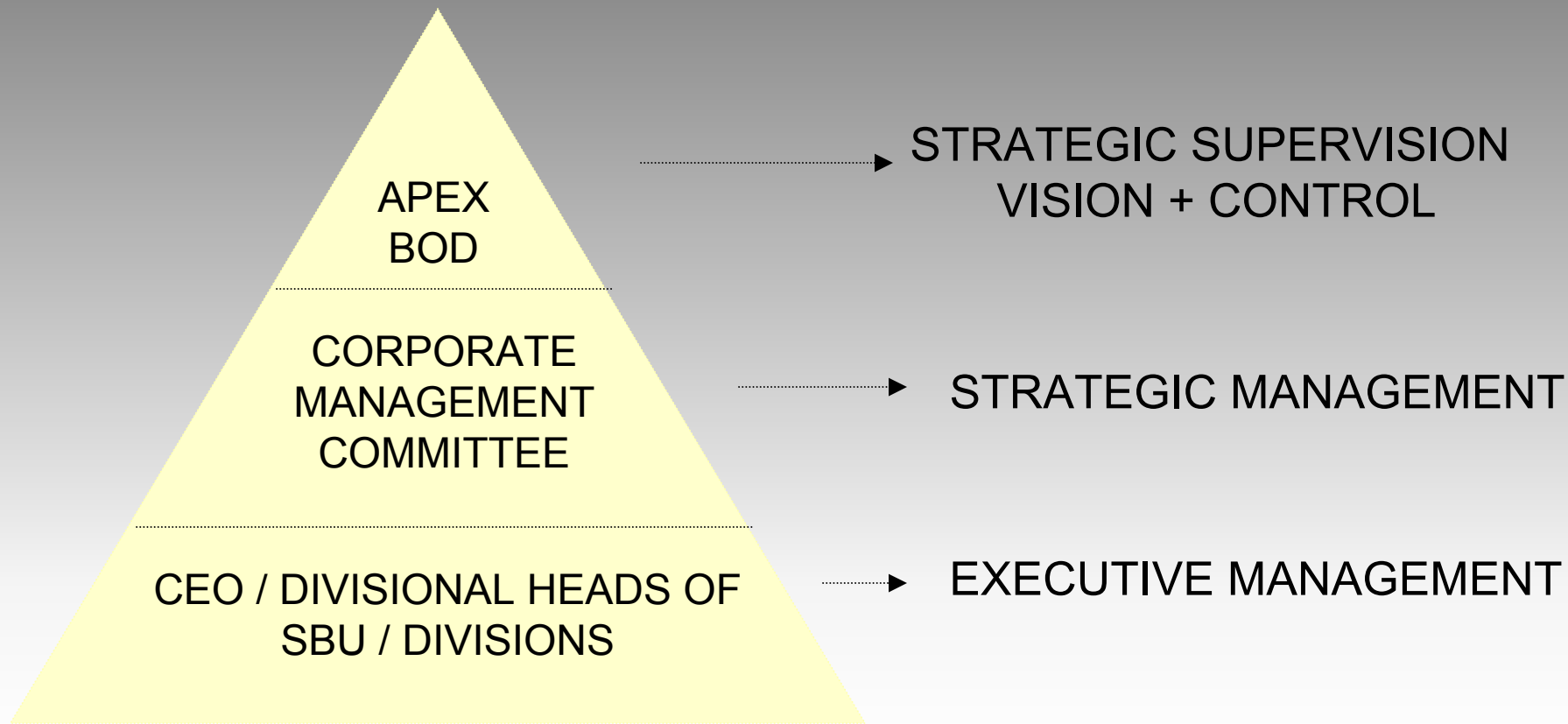
CONTROL

Suitable checks & balances to prevent misuse of POWER / AUTHORITY
Circumscribes the Freedom given to perform

ETHICAL CORPORATE CITIZEN

Setting exemplary standards of ethical behaviour INTERNAL / EXTERNAL
Sustained Unethical behaviour will negatively impact Shareholders value

Corporate Governance Structure



- # **BOD** – TRUSTEESHIP ROLE – PROTECT + ENHANCE SHAREHOLDER VALUE
- # **CMC** – STRATEGIC Mment of Co's Business within BOD approval.
- # **EXECUTIVE MANAGEMENT** – Manage Day to Day activities free from Strategic responsibility & focus on Effectiveness / Efficiency / Quality.

Regulation / Code of Conduct DOES NOT GUARANTEE ETHICAL

pursuit of Shareholder interest by Directors / Officers

ONLY MINIMAL 'CI' SITUATIONS WILL

Quality of Governance depends upon the COMPETENCE, INTEGRITY
& UNIMPEACHABLE ETHICAL STANDARDS SET BY DIRECTORS

Board of Director's

Entire BOD equally responsible for the BOD actions / decisions

Executive Director have additional Specific Responsibilities.

Combination –

Executive Directors

- Intimate Knowledge of the Co. and Business

Non Executive Director

- Bring a Broader Prospective
- Review performance of MD + Team
- Inform Chairman lead NED about Executive team
- Take lead in addressing potential “Conflict of Interest issues” between Executive Mment. & Company's Interest (Takeovers / Loans & Adv/ Directors pay/ Board Room Succession etc.)

CODE OF CONDUCT

A > Conflict of Interest Situation (RP Transaction)

- # CI Director should not be counted Quorum / Decision
- # Inter Corp Loans / Investments (Abuse of Enabling Reso / Postal Ballot)
- # Using Cash Flow to fund other Non Core Ventures
- # ID should vote to Return Cash to shareholders

B > Legal / Ethical Compliance Practises

- # Bribery - SIEMENS / STATOIL
- # Price Fixing - SIEMENS / ABB
- # Share Price Fixing - AIG / NYSE

C > Separation of Office of Chairman / CEO MUST

- # Checks & Balances
- # Role – Chairman – Looking Out
MD / CEO – Looking In

D > Remuneration Committee must be chaired by HR Expert

- # Compensation Issues
- # Market Related
- # Fair Wage
- # Relevance to Corporate Performance

BOD COMPOSITION / INDEPENDENCE / COSY COMFORT / CRONIES

- NYSE – GRASSO Case
- ENRON / WORLD COM
- XEROX
- NESTLE
- FI DIRECTORS NOT KEEN TO BE INVOLVED.
- FII / PVT EQ / PENSIONS FUND NOMINESS may make Diff (Truly Non Conflict of Interest Positions).

BOD COMPOSITION

- # Age 60 + Directors – DO NOT have ENERGY or KEENESS to do
– A GOOD JOB – SLEEP @ meetings
- # MOST DIRECTORS are PROMOTERS choice so they WILL not OBJECTIVELY / DISPASSIONATELY discuss Issues.
- # Directors lack EXPOSURE / ABILITY / KNOWLDEGE to discuss OBJECTIVELY with OPERATING MANAGEMENT have do not get INVOLVED in DELIBERATION's

REMUNERATION

- # PROMOTERS DIRECTORS PAY THEMSELVES BEYOND “ABILITY” due to
 - Upper limit of PROFIT COMMISSION %
 - Appoint HR Consult to prepare a Report justifying SALARY

- # EVA not INTRODUCED

- # Prof. Mgrs CEO / CFO play along knowing well that some spoils will come their way

LEGAL COMPLIANCE

The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.

Reasons for Account Restatements

5 Year (1997 – 2002)

US – GAO's Office

#	Revenue Recognition	-	39%
#	Cost Recognition	-	14%
#	Debt etc.	-	13%
#	Restructuring	-	10%
#	M&A	-	6%
#	Related Party	-	4%
#	Miscellaneous	-	16%

			100%

1200 Restatements

A / C Fiddle

Income Stmt

Settled

ENRON ↑ Sales

Bust

WORLDCOM ↓ Costs

Rev Exp - TFD Capex

REORG

DELPHI ↓ Costs

Rev Exp - PV of Rebates

BRISTOL MYERS

- Accelerated Sales – 2.5 Bln

- Restructuring W / back – 1 Bln

} 100 Mln

A / C Fiddle

Income Stmt

Settled

XEROX

↑ Sales - \$ 6 Bln – 97-00

\$ 200 Mln

LUCENT

↑ Sales

AIG

Smoothing Earnings

-CEO stepped down

37 years

-\$ 125 Mln

QWEST

↑ Sales - 3Bln (99 - 02)

↓ Exp - 231 Mln

A/C Fiddle

Balance Sheet

Settled

# PARAMALAT	↑Debt (\$14.5 Bln = 8x disclosure)	↑Cash (Non existent) \$ 4 Bln
# SHELL	Overstating Reserves by 20% (1997 – 2001)	\$150 Mln Settled CEO/CFO/EP out
# GE	Overstating Reserves to Swiss Re. in \$ 6.8 Bln Transaction (change of Guard 2005)	\$3.4 Bln Rebate Business Profits
	Claim not booked (1996 – 99) – 90% of Insurance Best Years	

Fraud

- # TYCO Personal Expenses paid by company
- # REFCO \$430 Mln Loan by Self / Co.
- # HYUNDAI MOTORS \$ 100 Mln Embezzlement – 3 Yrs Prison
- # DAEWOO Embezzlement
- # SK CORP Fraud

THE SCANDAL SHEET

Company	Primary allegations	Alleged culprits
Enron	Fraudulently inflated financial results; conspiracy; money laundering	CFO, CEOs, Ses
WorldCom	Fraud; improper profiting from IPOs; inappropriate company loans; conspiracy	CFO, CEO, CT, SEs
Xerox	Fraudulently inflated financial results to profit from bonuses and stock sales	CEO, CFO, SEs
Adelphia	Fraud; misuse of corporate funds to inflate stock-value; inappropriate company loans	CEO, CFO, SEs
Tyco	Tax evasion; misuse of company funds to inflate stock-value; inappropriate company loans	CEO, CFO, CLO
Qwest	Improperly profited from IPOs; fraudulently inflated financial results	CEO, CM, SEs
Ahold	False declaration of pre-tax profits	CEO, CFO, CLO, SEs
Investment Banks	Abuse of conflict of interest	12 Wall Street firms

SPINNING

(\$ Million)

Company	Penalty	Disgorgement	Independent research	Investor education	Total
Bear Stearns	25	25	25	5	80
Citigroup	150	150	75	25	400
Credit Suisse First Boston	75	75	50	-	200
Goldman Sachs	25	25	50	10	110
J. P. Morgan	25	25	25	5	80
Lehman Brothers	25	25	25	5	80
Merrill Lynch	100	-	75	25	200
Morgan Stanley	25	25	75	-	125
Piper Jaffray	13	13	8	-	33
UBS Warburg	25	25	25	5	80
Total	488	388	433	80	1,388

Source: Securities & Exchange Commission

SPINNING: THE PROVISION OF SHARES IN HOT INITIAL PUBLIC OFFERING (IPOs) TO EXECUTIVES WHOSE FIRMS ARE POTENTIAL CLIENTS

MUTUAL FUNDS - Late Trading and Market Timing

Company	Source of investigation	Charge / investigation
Alliance Capital	New York state / SEC	Market timing
Bank of America	New York state / SEC	Market timing / late trading
Bank One	New York state	Market timing
Bear Stearns	Client Lawsuit	Market timing
Charles Schwab	Internal	Questionable trades
Citigroup	Internal	Market timing / late trading
Janus Capital	New York state / SEC	Market timing
Merrill Lynch		Market timing
Morgan Stanley	New York state / MA / SEC	Directed brokerage
Prudential Securities	MA / SEC	Market timing

Source: Morningstar; Reuters; SEC; State prosecutors; TheStreet.com; Wall Street Journal; Washington Post

LATE TRADING: ILLEGAL PRACTICE OF BUYING OR SELLING MUTUAL FUND SHARES AT THE TRADING DAY'S PRICE AFTER THE MARKET HAS CLOSED

MARKET TIMING: THE RAPID TRADING OF MUTUAL-FUND SHARES IN ORDER TO TAKE ADVANTAGE OF THE GAP BETWEEN THE PRICE OF THE FUND, WHICH IS SET ONE DAY, AND THE CONTINUOUS CHANGES IN THE VALUE OF THE UNDERLYING PORTFOLIO OS SHARES

Collusion

Internal & External

- Internal CEO / CFO Team
- External Auditors
 - All Big 4 / 5 involved
 - Extended Run > 7 Yrs

Solution

IC Tight / IA Report AC

Rotate > 3 Yrs

“ AC Experts”

1 Legal / 2 Finance

Jt. Auditors

(build new competencies)

AUDIT COMMITTEE

- # Staffed by NON FINANCE BACK GROUND ID.
- # CEO / CFO / IA / SA have a FIELD DAY.
- # CHAIRMAN has NO PROVEN EXPERTISE in FINANCE AREA
- # Should have 1 LEGAL EAGLE as many CONTRACTUAL ISSUES arise.

A > RELATED PARTY TRANSACTIONS

- (I) Summary of transactions with Related Parties – Audit Committee (AC)

- (II) Details of Material Individual Transactions –
“**NOT IN THE ORDINARY COURSE OF BUSINESS**”
OR **NOT** on an **ARM’S LENGTH BASIS** Should be placed before AC together with Managements Justification.

B> DISCLOSURE OF ALTERNATIVE ACCOUNTING TREATMENT

- # Different from Accounting Standard
- # How is it more representative of TRUE & FAIR view of transactions

C> RISK MANAGEMENT (Procedures)

- # Risk Assessment
- # Risk Mitigation
- # Periodic Review of Management Control & Risk Management Framework

D > PROCEEDS OF PUBLIC ISSUES – AC

- # Use of Funds (CAPEX / Working Capital / Investment) Quarterly basis
- # Use of Funds (CAPEX / Working Capital / Investment) OTHER THEN Intended use – Annual basis
- # Certified by Statutory Auditor

LESSONS FOR INDIA

- # SEBI Disclosure norms to be strictly implemented
- # Non Compliance should attract stringent punishment together with steep costs (to act as deterrent) dealt quickly
- # SEBI should have Penalties in place so no need for Adjudication
- # Courts to expedite such cases directly @ HC / SC Level
- # Do not “DELIST” slap Penalties on errant Directors (Promoter / Non Promoter), Auditors
- # Appoint Directors to correct situation rather than delist

SEBI / RBI / COURTS

- # Singular Failure to bring to book (Successfully) any Big Time Offender (HM / KP / UTI)
- # Delayed Prosecution etc 10 – 15 Yrs
- # SEC / FEA - Swift / Quick
- # ENRON / WORLD COM etc. Courts Strong Indictment
- # Legislation / Remedies
Various Committees - Tardy Implementation
(KM / NM / NC)

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President & CEO



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- Infrastructure
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THANK YOU