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The mission is, first, to increase high level awareness that Global Warming can effectively be addressed through shareholder based corporate governance – now, and, second, to identify and educate the appropriate leaders to bring this about. Corporations, assured that their competitors are being held to the same standards, will not ultimately be threatened; institutional investors, with a perspective congruent with that of environmentalists, will embrace increase of long term value; government, focused on enforcing existing laws and participating in setting standards, will function in its intended role. The challenge is to make the right people understand that this difficult problem can be “solved” on a win/win basis?

This solution can be achieved only after scaling structural and linguistic hurdles in four categories.

1. Who sets the standards? There are so many voices, ranging from the United Nations, the Kyoto signatories, an infinity of NGOs, universities and consultants all insisting that their formulation of the problem and their recommended solutions are correct – and are the only ones that are correct. How can all these constituencies be harmonized, and who is going to decide who is correct? We cannot very well lead a movement we cannot enlist corporate allies effectively unless we can articulate clearly and unambiguously what are the goals.

It is sometimes lost sight of that no one of these prestigious entities has authority to promulgate rules which will legitimately define the scope of permissible corporate conduct. Only, government can set binding rules. That is where the problem begins. No American can think that the government's rules respecting permissible emissions from automobiles, for example, represents much other than the power of corporations to dominate the law making and enforcing process. *Legitimate* government rules must be based on an informed and uncoerced process.

Corporations must disclose all relevant information about the impact of their functioning on society in the realms where legislation is contemplated. One could imagine this evolving out of the GRI process. Corporations must maintain open communication with law makers and law enforcers, but the relationship need be characterized by restraint. It is in corporations' interest that governments promulgate appropriate laws and regulations concerning their operations, if, for no other reason, so as to assure that their competitors will have to live by the same rules. Having a single set of rules simplifies the problems both of monitoring and of compliance. Lord John Browne undertook for British Petroleum to cease political contributions of all kinds all over the world. Business cannot prostrate itself before other competitors for government largesse, but, as the largest source of political financing, it is in a position to negotiate the diminution of all institutional money in politics. The owners of corporations can, and should, insist that *their* companies follow this litany.

2 – No government or corporate official has time perspective that is compatible with culture in the world today.

There is asymmetry in the relevant time frames for the various parties. Corporations and nations theoretically last forever, but their agents have short time spans. Reelection and bonus vesting times naturally enough dominate motive. It is hard to find either in the corporate or the political

constellation parties having a time frame of reference congruent with planetary environmental needs.

While there is some measure of agreement that corporations are to be run for the benefit of their shareholders, there is amazingly little focus on what this really means. There are shareholders whose interests are the blip on a computer program; arbitrageurs are “in and out” several times a day; mutual funds trade with reference to periodic taxes, and so forth. The largest category of owner is the pension system and its largest component is the defined benefit plan. Pensioners typically have eighteen years of work before retirement so their trustees should have a long term viewpoint.

There has evolved the so-called “index” mode of investment through which a purchaser acquires an interest in whatever category of securities they choose. The index will always hold those particular securities, so the ownership term is, for all intents and purposes, perpetual. The percentage of the total outstanding market that is “indexed” cannot be accurately determined, but it is certainly more than ten percent and probably less than twenty. There exists, therefore, a substantial class of permanent equity owners.

It seems counter intuitive to look to mechanically assembled bundles of equity security for an activist energy or a concern for the impact of the functioning of portfolio companies. However, the index funds are a niche product competing for the investors’ attention. They have a unique interest in assuring that equity markets are the most attractive investment mode for generating value in the future.

3. National governments do not have authority that is congruent with borderless corporate activity

Modern corporations have world wide operations; nation states’ jurisdiction is geographically limited. International organizations do not, generally in the area of the environment, have authority to promulgate and enforce rules respecting corporations. Businesses can choose legal domicile wherever it seems of greatest advantage. There is great flexibility in choosing which operations should be subject to the jurisdiction of which country. No country has complete authority or ability to regulate the full scope of a multi national corporation’s functioning. There is great competition among countries to attract corporations – with their jobs and tax revenue producing operations. This inevitably ends in a “race to the bottom” as countries compete to attract business. Most countries have strong traditions of government hegemony over business. Indeed, in most countries until recent times the government has been the owner and operator of many of the basic industries. Only the United States has inveterate and largely unchanging traditions of aversion towards government involvement in business. But, the United States is the dominant business culture in the world today.

Because countries are not able effectively to pass laws in areas having global impact, there has been a tendency towards international treaties. The Kyoto Accord was the UN’s initiative to provide a global solution in areas relating to global warming. Countries are largely free to decide whether or not they will be bound by such international accords. The United States famously has usually declined to be bound – whether it was the Law of the Sea under President Reagan or the Kyoto Accord under George W. Bush. There is, therefore, no authority from outside that effectively limits corporate conduct.

There has emerged the phenomenon of The New Global Investor. Pension funds from the US, UK, the Netherlands and other Anglophone countries are not merely the largest shareholders of companies in their own countries, but in all the other countries of the world having public markets. “not all shareholders need to be activist. Some owners may participate meaningfully in equity risk/reward through indexes or other non-voting arrangements – so long as there exists somewhere in the corporate constellation an informed and effective nucleus of participating owners. The significant percentage that pension funds own in corporations worldwide suggests

that they will be able to rise to this challenge.”[RAGM, NGI,177] We can look to effective monitoring of corporate environmental policies and practices from *within* its governance structure.

4. Activists comprise a relatively small and polarized portion of the institutional shareholders' shareholdings.

The State of California (CALPERS) and the City of New York (NYCERS) pension funds really are the only committed long term activist institutions in the U.S. At certain times, the College Retirement Equity Fund (CREF) has been usefully active and other state funds have periodically been involved anecdotally. There has been virtually no involvement by foundations or university endowments. There has been no involvement by private company pension schemes subject to ERISA. So, the activists are government pension funds of which the trustees are elected officials and the agents are civil servants, not cadres experienced in or sympathetic towards business goals. How can this “beachhead” of institutional activists be transformed into a credible foundation for ownership based corporate governance.

It has long been observed that no-one looks after other people's assets as well as they do their own. The need is to move from the rhetoric of giving primacy to longer-term shareholder value to making it a reality in a socially acceptable way commanding public trust. This requires the alignment of the interests of corporate managements and institutional intermediaries to those of individual and beneficial shareholders. The present widespread and serious conflicts of interest would never be tolerated in politics. They should no longer be tolerated in business where most of the retirement savings of America and Britain are subject to significant avoidable risk and damage. Indeed such is the current public and political mood in both countries that major changes are inevitable. The challenge is to ensure that the changes realistically address the main problems.

The existing law governing trustees and fiduciaries in America and Britain already explicitly requires that they act solely in the interests of their beneficiaries for the exclusive purpose of providing them with benefits. But this law has not been enforced in either country, nor have there been penalties for inaction. What is required is not so much new law as the enforcement of the existing law on pension fund trustees, life insurance company fiduciaries (in fact on their boards of directors) and, by implication, equally on the boards of mutual funds, unit and investment trusts. My clear preference is to enable owners to look after their own interests by removing the handicaps which presently prevent them. It is impossible for either owners, or their intermediaries, or self-regulation, or market forces to overcome the present serious systemic fault. An effective external catalyst is needed and that catalyst can only be government enforcement of existing laws.

What is needed is a clear and consistently enforced public policy. It must give all owners' representatives, the intermediary investment institutions and their fund managers, the clear fiduciary requirement to be active with respect to companies held in their portfolio accounts, and the confidence that they will not be placed at a competitive or reputational disadvantage with their competitors by complying. Above all else, it must be unmistakable that both governments intend and are capable of enforcing the trustee and fiduciary laws for the 'sole' purpose and 'exclusive' benefit of their beneficiaries' interests - the greater part of the funded pensions of most citizens - in an even-handed way.

Tasks

1. Select, organize and fund a “2003 Working Group” to study and make recommendations for the accomplishment of the five tasks listed below (2-6).

2. Organize specific effort around Ceres/GRI information gathering / relationship to different levels of international and national governments so as to create a mechanism for “legitimate” standards.

3. Organize in US to persuade government to enforce ownership fiduciary responsibilities on employee benefit plan and mutual fund trustees.

4. Organize a program of basic shareholder resolutions for 2004 – at the corporations’ Annual Meeting, if not otherwise - along lines of disclosure, restraint and obedience to law.

5. Enlist a wider range of institutional investors, including prominent private company pension funds, mutual funds, foundations and university endowments.

6. Organize a meeting around 3 November 2003 in London. This is timed to coincide with the Hermes assembly of global activist institutional investors. Much of our agenda is far better developed in the UK; many institutional investors are specifically committed to Global Warming (USS); the two leading companies – BP & Shell – are promising candidates for involvement.

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