

THE NEW FEDERAL REGULATION OF CORPORATE GOVERNANCE

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I. INTRODUCTION: HAS BUSINESS LAW BECOME PUBLIC LAW?

Recent regulatory reforms, particularly the adoption of the Sarbanes-Oxley Act of 2002,¹ have led many commentators to argue that the federal government is improperly intruding into the traditional province of state law. Similarly, recent reforms have been criticized for imposing excessive regulatory intrusions upon the structure and organization of business relationships, a matter traditionally relegated to private contract.

These complaints are both true and false. They are false in the sense that disclosure obligations, accounting standards, and financial reporting have been regulated by the federal securities laws for more than seventy years. Whether or not the United States has the most efficient level of mandatory disclosure—and whether or not mandatory disclosure is even appropriate—it is clear that uniform financial reporting standards are both necessary and appropriate for national securities markets.

Securities regulation has been a species of public law since at least 1934, when Congress established the Securities and Exchange Commission to administer the operation of the capital markets “in the public interest and for the protection of investors.”² Although securities transactions are private contracts, they take place in public markets and have effects extending far beyond the specific parties involved. Moreover, there is a general societal interest in strong capital markets. The strength of the U.S. capital markets, due in part

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1. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28, and 29 U.S.C.).

2. Section 4(a) of the Securities Exchange Act of 1934 created the Securities and Exchange Commission. 15 U.S.C. § 78d(a) (2000). The Commission is given broad rulemaking authority. For example, § 10(b) authorizes the Commission to promulgate rules and regulations “as necessary or appropriate in the public interest or for the protection of investors.” 15 U.S.C. § 78(j) (2000).

to their relative safety and transparency, has been a fundamental component of this country's economic growth. Indeed, the U.S. capital markets are sufficiently attractive that they regularly attract listings from foreign issuers, some of whom appear to view compliance with extensive U.S. regulations as providing their securities with something like a good housekeeping seal.³ This public nature of business law is the central focus of Sarbanes-Oxley.

Similarly, it is misleading to view the auditing of publicly-traded companies as a matter of private law. When Congress initially adopted the federal securities laws, it considered bringing the auditing process explicitly into the public sector. It opted instead to provide the SEC with the authority to oversee the accounting industry and to promulgate uniform accounting principles. The SEC, in turn, has left the development of this important check on the quality of public disclosure in the private sector, with the understanding that the preparation and review of financial statements would be subject to government regulation and oversight.⁴ Subsequently, despite the importance of financial disclosure to the efficiency of the public securities markets, the accounting profession was able to maintain control over the standards of disclosure and the principles of financial disclosure evaluation.⁵ Nonetheless, the accounting profession was always understood to be serving a quasi-public function when it reviewed public company financial statements. In this light, the structure of an audit and the relationship between an issuer and its auditor were not really part of the issuer's internal self-governance.⁶

Historically, the regulation of business has been split between corporate law and securities law. Corporate law is contractual, enabling, and administered by the states; securities law is national,

3. See, e.g., John C. Coffee, Jr., *Racing Towards the Top?: The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance*, 102 COLUM. L. REV. 1757, 1762–67 (2002) (describing increasing number of foreign issuers that are choosing to list their stock on U.S. exchanges and thereby agreeing to comply with the federal securities laws).

4. See Anthony J. Luppino, *Stopping the Enron End-Runs and Other Trick Plays: The Book-Tax Accounting Conformity Defense*, 2003 COLUM. BUS. L. REV. 35, 140 (describing the SEC's decision to allow business and the accounting industry to develop accounting principles).

5. See JOEL SELIGMAN, *THE TRANSFORMATION OF WALL STREET: A HISTORY OF THE SECURITIES AND EXCHANGE COMMISSION AND MODERN CORPORATE FINANCE* chs. 5–6 (rev. ed. 1995) (reporting on James Landis's decision, as SEC Chair, to allow the accounting profession to establish its own regulatory norms).

6. As Chief Justice Burger explained: "By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with the client." United States v. Arthur Young & Co., 465 U.S. 805, 817 (1984).

mandatory, and administered by the Securities and Exchange Commission and the self-regulatory organizations.⁷ Accordingly, regulation of disclosure, the securities markets, and financial reporting are neither new nor, from a federalism perspective, particularly troubling. Sarbanes-Oxley, however, together with the increasing involvement of national regulators in the regulation of corporate governance, reflects a breakdown in this division of responsibility.⁸ A similar breakdown is reflected in the enforcement actions undertaken by New York Attorney General Eliot Spitzer with respect to analyst conflicts of interest and abuses in the mutual fund industry.⁹ Spitzer's investigations focused on problems at big Wall Street institutions and in the national securities markets, which have traditionally fallen within the purview of federal securities regulation.¹⁰

In this essay, I focus on the implications of the increasing federal regulation of corporate governance for director independence, executive composition, and the role of board committees. These topics are now the subject of federal regulation, through mandatory provisions contained in Sarbanes-Oxley, as well as SEC and stock exchange rules.¹¹ Although I have little quarrel with the substance of the new corporate governance provisions, I question the increasing intrusion of federal law into business decision-making. First, it is not clear that the federally mandated governance standards are desirable. Second, the standards interfere with the traditional province of state law to develop and apply context-specific legal principles concerning director independence and the role of board committees. Third, uniform national standards impede regulatory competition and the

7. See, e.g., William B. Chandler III & Leo E. Strine, Jr., *The New Federalism of the American Corporate Governance System: Preliminary Reflections of Two Residents of One Small State*, 152 U. PA. L. REV. 953, 973–74 (2003) (describing traditional division of responsibility between state law, federal law and stock exchange rules).

8. See *id.* at 973 (describing 2002 reforms as “a departure from the general spheres in which the three principal sources of corporate governance guidance in the American system have operated.”).

9. See, e.g., Gretchen Morgenson & Patrick McGeehan, *Corporate Conduct: The Overview: Wall Street Firms Are Ready to Pay \$1 Billion in Fines*, N.Y. TIMES, Dec. 20, 2002, at A1 (describing Spitzer's investigation and negotiated settlement of litigation based on analyst conflicts of interest); Diana B. Henriques, *Spitzer Casting a Very Wide Net*, N.Y. TIMES, Oct. 12, 2003, § 3, at 1 (describing Spitzer's investigation into improper mutual fund trading practices).

10. See, e.g., Gretchen Morgenson, *Call in the Feds. Uh, Maybe Not*, N.Y. TIMES, Feb. 29, 2004, § 3, at 1 (describing Spitzer's investigations as increasing the friction between state and federal regulators).

11. See Chandler & Strine, *supra* note 7 (describing scope of 2002 statutory and SRO reforms).

ability of state corporate law to respond to changing business developments.

II. THE NEW FEDERAL REGULATION OF CORPORATE GOVERNANCE

Sarbanes-Oxley contains unprecedented intrusions into corporate governance. The statute includes a series of mandatory rules governing the composition and responsibilities of audit committees of the board of directors. Sarbanes-Oxley imposes federal restrictions on potential conflict of interest transactions, directly prohibiting corporations from loaning money to their officers and directors. Sarbanes-Oxley requires corporate CEOs and CFOs to certify the accuracy of the corporation's financial statements, further providing that if the company's certified financial statements are subsequently restated, the CEO and CFO must forfeit any bonus, stock, or option-based compensation. Finally, Sarbanes-Oxley increases the SEC's power to determine that an individual is unfit to serve as an officer or director of a publicly-traded company, even in the absence of a judicial finding of a violation of the federal securities laws.

Congress's intrusions into corporate governance have been supplemented by self-regulatory organization ("SRO") rules. At the urging of the SEC, the New York Stock Exchange and NASDAQ have mandated majority independent boards, adopted new definitions of director independence, and specified the composition and responsibilities of key board committees, including the nominating and compensation committees.¹²

Concededly, the federal government's reforms have the potential to improve the integrity of the corporate decision-making process. Moreover, the requirements largely reflect best practices that have been voluntarily adopted by many major issuers. Nonetheless, there are problems with the federal approach. It is not clear, for example, that either Congress or the SEC has the ability to identify a model governance structure. With respect to board independence, extensive empirical research has failed to demonstrate a relationship between director independence and corporate performance.¹³

The inability of empirical research to demonstrate the superiority of

12. New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc., Order Approving Proposed Rule Changes (SR-NYSE-2002-33 and SR-NASD-2002-141) and Amendments No. 1 thereto, Exch. Act Rel. No. 34-48745 (Nov. 4, 2003).

13. See, e.g., Jill E. Fisch & Caroline M. Gentile, *The Qualified Legal Compliance Committee: Using the Attorney Conduct Rules to Restructure the Board of Directors*, 53 DUKE L.J. 517, 559-61 (2003).

wholly independent boards is not surprising. The board independence requirement, like many of the new reforms, privileges the board's role in monitoring management above all other board functions. Yet monitoring the corporation's executives and serving as a watchdog against corporate misconduct is a fairly narrow role for a board. It is important to remember that public company boards are typically comprised of top level executive talent. Corporate boards can add value in a variety of ways, including advising the CEO, developing long term strategy, and bringing business expertise to the table. A board that performs these functions well is likely to enhance corporate profitability, perhaps more so than a board that merely prevents management from stealing. As I have argued elsewhere, there are obvious trade-offs between the board's ability to manage the business and its ability to act as an effective monitor.¹⁴ The very qualities in directors that enable them to exercise strategic oversight—teamwork, management, long term business relationships—are likely to interfere with their ability to monitor effectively. In addition, the most efficient, and thus ideal, board composition may vary depending upon firm-specific characteristics. This raises further questions about the one-size-fits-all approach of a mandatory board structure.

The SEC's emphasis on director independence and formal committee structure privileges cosmetics over functionality. This creates two problems. First, it is impossible to specify fully the scope of conflicts and relationships that may impede a director's ability to function independently.¹⁵ The boards of Enron and Disney provide recent examples of boards comprised of directors who technically complied with existing legal standards for independence but proved incapable of functioning effectively.¹⁶ Second, the ideal board is one that is informed and engaged rather than simply independent. The independent directors at Enron were as surprised as anyone to learn

14. See Jill E. Fisch, *Taking Boards Seriously*, 19 CARDOZO L. REV. 265, 267 (1997) (identifying trade-off between board's ability to monitor and its role in strategic management).

15. See Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 798-99 (2001) (criticizing formal definitions of director independence for their failure to capture directors' willingness to engage in active monitoring).

16. See, e.g., Janis Sarra, *Rose-Colored Glasses, Opaque Financial Reporting, and Investor Blues: Enron as Con and the Vulnerability of Canadian Corporate Law*, 76 ST. JOHN'S L. REV. 715, 728 (2002) (observing that all but two of Enron's fifteen directors "were ostensibly independent"); *In re Walt Disney Co. Derivative Litig.*, 731 A.2d 342, 361 (Del. Ch. 1998) (finding, despite widespread public criticism of Disney board's lack of independence, that directors were capable of acting independently); see also Jill E. Fisch, *Teaching Corporate Governance Through Shareholder Litigation*, 34 GA. L. REV. 745, 759-61 (2000) (criticizing the *Disney* court's conclusions).

about the company's problems. One after one, they lined up before Congress and testified that they didn't understand the company's business.¹⁷ In the absence of mechanisms to promote director activism, mechanisms that the SEC appears unwilling to confront, structural reforms are unlikely to produce long term changes in board effectiveness.¹⁸

Indeed, the difficulty in assessing the impact of corporate governance structures on business performance and the risk that there may not be a single "ideal" governance model are reasons why corporate law has evolved into a primarily enabling regulatory structure—one that provides individual issuers with a variety of governance options subject to market discipline.¹⁹ This market discipline means that a firm that chooses inefficient governance terms will suffer in its effort to compete for capital from investors.²⁰

Even if there are imperfections in market discipline, there is no reason to believe that government regulators or SROs can do better.²¹ Indeed, there is every reason to believe they will do worse. The federal government's efforts to deal with excessive executive compensation provide a ready example. Changes to the tax laws appear to have led to an explosion in overall compensation levels and, in particular, to a dramatic increase in option-based compensation.²² Similarly, the increased disclosure of executive compensation

17. See Marleen O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233 (2003) (describing the directors' lack of knowledge and offering psychological explanations for their behavior).

18. For an extended analysis of the limitations of existing mechanisms for promoting director activism, see Fisch & Gentile, *supra* note 13.

19. See, e.g., FRANK EASTERBROOK & DANIEL FISCHER, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 2 (1991) (describing state corporate codes as "enabling ... allow[ing] managers and investors to write their own tickets ...").

20. See *id.* at 16-22 (describing the manner by which the market disciplines issuer's governance choices); see also Ralph K. Winter, Jr., *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251, 256 (1977) (describing various market forces that constrain management decision-making).

21. See, e.g., Stephen J. Choi & Jill E. Fisch, *How to Fix Wall Street: A Voucher Financing Proposal for Securities Intermediaries*, 113 YALE L.J. 269, 273-74 (2003) (criticizing the ability of regulators to respond appropriately to analyst conflicts of interest).

22. See, e.g., Brian J. Hall & Kevin J. Murphy, *The Trouble with Stock Options*, 17 J. ECON. PERSPECTIVES 49, 53-54 (2003) (describing how tax and accounting rules in the early 1990s led to the growth of problematic option-based compensation); MICHAEL C. JENSEN ET AL., *REMUNERATION: WHERE WE'VE BEEN, HOW WE GOT TO HERE, WHAT ARE THE PROBLEMS, AND HOW TO FIX THEM* (Eur. Corp. Gov. Inst., Working Paper No. 44, 2004), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=561305 (last visited Dec. 2, 2004) (describing how changes to tax and disclosure rules contributed to the growth in total compensation packages by requiring that most compensation be "performance-based").

mandated by the SEC has had a Lake Wobegon effect, since no compensation committee wants to characterize its CEO as below average.²³

III. THE EFFECT OF FEDERAL REGULATION ON EXISTING STATE REGULATION OF CORPORATIONS

Regardless of whether the reforms adopted by Sarbanes-Oxley and the SRO rules are substantively desirable, relatively little thought has been given to the relationship between the new federal governance standards and existing state law. Consider, for example, the subject of director independence. Through a long series of judicial decisions, Delaware, home to more than half of all publicly-traded companies, has developed a nuanced conception of director independence that evaluates the practical constraints on a director's ability to function effectively with respect to a specific business issue.²⁴ Accordingly, a director could be independent for the purpose of evaluating a demand requirement, but conflicted on the issue of the CEO's compensation package.

Instead of a function-specific approach, the federal reforms use a laundry list of conflicting relationships that disqualify a director from being classified as independent. The lists are both over- and under-inclusive. They treat minor business dealings between companies as sufficient to create a conflict but do not disqualify directors on the basis of social ties or friendship. The formulaic nature of the definitions is illustrated by the fact that they characterize Warren Buffett as an inappropriately "conflicted" member of the audit committee of Coca-Cola, Inc. because he controls companies that do business with Coke.²⁵

More importantly, the lists create a tension with state law. Are the Delaware courts now supposed to use stock exchange definitions of independence for the purpose of determining whether a board is capable of responding to a shareholder demand? Should different criteria apply when the court reviews board approval of a conflict of interest transaction?²⁶

23. See Fisch, *supra* note 16, at 762 (describing how increased disclosure of executive compensation has provided executives with ammunition for negotiating higher packages).

24. See Chandler & Strine, *supra* note 7, at 996–97 (highlighting context-specific nature of Delaware's definition of independent director).

25. See Edward Iwata, *Businesses Say Corporate Governance Can Go Too Far*, USA TODAY, June 24, 2004, at 1B (explaining that "[U]nder new governance rules, Buffett does not qualify as an independent director on an audit committee.").

26. See Chandler & Strine, *supra* note 7, at 998 (warning of the dangers of extending

In interfering with subjects that have traditionally been regulated by state law, the federal reforms extend beyond meddling with the composition of the board. Sarbanes-Oxley also prohibits issuers from lending money to their corporate officers. Many years ago, state law prohibited such loans, along with a host of other transactions involving actual or potential conflicts of interest. Such self-dealing transactions were subject to outright prohibition.²⁷ This bright line rule was easy to apply, but it didn't always work out well; sometimes the rule caused a corporation to lose a valuable officer or director, and sometimes the corporation lost out on a good business opportunity. The inflexibility of this approach led to its elimination. State corporate law responded more flexibly, developing procedural protections and judicial fairness review as safeguards for problematic transactions.²⁸ Nothing in the legislative record of Sarbanes-Oxley suggests that the approach of existing state law is inappropriate or that an outright prohibition on loans to officers helps the vast majority of U.S. businesses.

Another example is executive compensation. Media attention has been focused on this issue recently, telling us that CEOs are paid too much money, that this is a terrible problem, and that this is something to which corporate law should respond. Unfortunately, it is not clear that the federal government, the SEC, or the stock exchanges can determine appropriate compensation standards. Indeed, the New York Stock Exchange is having its own problems in this area.²⁹ As indicated above, previous federal regulatory efforts have also proved counterproductive.

Most recently, the SROs have responded to concerns about abuses in executive compensation by adopting new requirements that shareholders approve executive stock option plans.³⁰ Stock exchanges have traditionally required shareholder approval of certain types of option plans as part of their listing requirements—this is not

the stock exchange labels of interested or independent director to specific transactions).

27. See Harold Marsh, *Are Directors Trustees? Conflicts of Interest and Corporate Morality*, 22 BUS. LAW. 35, 36–37 (1966).

28. See *id.* at 39–43 (describing the evolution of corporate law rules governing self-dealing transactions).

29. See, e.g., Kate Kelly, *Painful Progress at the Big Board*, WALL ST. J., Aug. 27, 2004, at C1 (describing litigation between the NYSE, its former CEO, and New York Attorney General Eliot Spitzer over Grasso's compensation package).

30. See Securities Exchange Act Release No. 48108 (June 30, 2003), 68 Fed. Reg. 39995, 40001-09 (July 3, 2003) (explaining the various concerns raised by commentators and the subsequent amendments the NYSE and NASDAQ made to their original proposals), available at <http://www.sec.gov/rules/sro/34-48108.htm>.

something new.³¹ Nonetheless, the range of issues on which shareholders have the right to vote is an integral part of the balance of power between shareholders and management, a balance traditionally in the domain of state corporate law. The SROs' intrusion into this balance is troubling. As two Delaware judges have observed, the SROs might similarly decide that shareholders should have the right to vote on the adoption of a poison pill, despite state law empowering management to adopt such a pill without shareholder approval.³² Independent of the question of who should allocate voting rights within the corporation, the SROs' rule regarding approval of option plans must be reconciled with state law that increasingly relies on the board of directors, through the compensation committee, to structure executive compensation. The SROs and the SEC do not seem to have considered carefully the relationship between the requirement of shareholder approval and the empowerment of the board.

The foregoing are just a few examples of potential conflicts between the new federal standards and the pre-existing or developing rules under state corporate law. To the extent that federal standards intrude into traditional areas of state regulation, they may create confusion. Federalization may also reduce the responsiveness of state lawmakers in favor of leaving the field to the federal government. I have argued elsewhere that federal regulation of shareholder voting through the federal proxy rules has largely supplanted state law development, leading to inadequate protection of shareholder voting rights.³³ Sarbanes-Oxley threatens to broaden that effect beyond shareholder voting.

Uniform national standards are additionally problematic because they impede experimentation through the process of states acting as laboratories in introducing corporate governance reforms. The business world changes rapidly in response to technological developments, global competition, and a number of other pressures. Indeed, the financial reporting reforms implemented through Sarbanes-Oxley were arguably triggered by market developments such as the high tech bubble of the late 1990s. The federalist system of corporate law has been defended for its ability to respond to new

31. See Randall S. Thomas & Kenneth J. Martin, *The Effect of Shareholder Proposals on Executive Compensation*, 67 U. CIN. L. REV. 1021, 1050-53 (1999) (describing various changes to stock exchange rules requiring shareholder approval of option plans).

32. See Chandler & Strine, *supra* note 7, at 975-76 (warning of this possibility).

33. Jill E. Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 VAND. L. REV. 1129, 1192-93 (1993).

business developments.³⁴

Delaware has been particularly successful in adapting its corporate law to changing circumstances.³⁵ A prime example is how Delaware courts developed legal standards governing takeovers by gradually announcing principles designed to protect the role of the board in overseeing corporate control transactions while simultaneously preserving the market for corporate control.³⁶ Another example is the courts' recent use of the duty of good faith to limit the scope of director exculpation provisions and to subject superficial or rubber-stamping board decisions to judicial oversight.³⁷ Indeed, there are even indications that Delaware may use the duty of good faith to address the issue of executive compensation.³⁸

Although Delaware law has been criticized for providing insufficient accountability for directors and officers, it is worth observing that recent empirical work found that firms incorporated in Delaware were more profitable than those incorporated elsewhere.³⁹ One possible explanation for this finding is that Delaware structures its lawmaking process to be responsive to changing business developments without hamstringing business operations.⁴⁰ Federalization of corporate law sacrifices this process.

IV. CONCLUSION

In defending the recent regulatory reforms, SEC Commissioner Cynthia Glassman explained that Sarbanes-Oxley and the Commission's rules are aimed at "insuring that those who act on

34. See, e.g., ROBERTA ROMANO, *THE GENIUS OF AMERICAN CORPORATE LAW* 769 (1993) (arguing that state regulation offers greater responsiveness and flexibility than a uniform federal system).

35. *Id.*

36. See Jill E. Fisch, *The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters*, 68 U. CIN. L. REV. 1061, 1086–87 (2000) (describing Delaware's incremental approach to the legality of dead hand poison pills).

37. See generally Hillary A. Sale, *Delaware's Good Faith*, 89 CORNELL L. REV. 456 (2004) (summarizing Delaware's recent development of the duty of good faith).

38. See *In re Walt Disney Co. Derivative Litig.*, 825 A.2d 275, 278 (Del. Ch. 2003) (denying motion to dismiss amended complaint based on possible violation of the duty of good faith).

39. See Robert Daines, *Does Delaware Law Improve Firm Value?*, 62 J. FIN. ECON. 525, 529–35 (2001) (finding higher Tobins Qs for Delaware firms than for comparable firms incorporated elsewhere). But see Guhan Subramanian, *The Influence of Antitakeover Statutes on Incorporation Choice: Evidence on the "Race" Debate and Antitakeover Overreaching*, 150 U. PA. L. REV. 1795, 1809–10 (2002) (qualifying Daines' findings).

40. See Fisch, *supra* note 36, at 1088–96 (identifying particular advantages of Delaware's lawmaking structure).

behalf of a company give life to the corporate conscience.”⁴¹ It is not clear, however, that it is appropriate or even possible for Congress or the SEC to impose their view of corporate responsibility on U.S. businesses through regulation.

U.S. businesses today are overwhelmed with new legal responsibilities that entail millions of dollars in annual compliance costs.⁴² We are in the middle of a prolonged economic slump, and the emphasis on corporate compliance diverts executive time and effort from key issues such as product development, job creation, efficiency, and global competitiveness.⁴³ Ultimately, we need U.S. businesses to make high quality business decisions. The increasing intrusion of federal law into how corporations go about their business threatens to sacrifice the prime objective of corporate productivity.

41. Cynthia A. Glassman, *Sarbanes-Oxley and the Idea of “Good” Governance*, Address Before the American Society of Corporate Secretaries (Sept. 27, 2002), available at <http://www.sec.gov/news/speech/spch586.htm>.

42. See Deborah Solomon & Cassell Bryan-Low, *Companies Complain About Cost of Corporate-Governance Rules*, *Wall St. J.*, Feb. 10, 2004, at A1 (describing new legal and accounting costs associated with compliance with Sarbanes-Oxley).

43. See, e.g., Paul Volcker & Arthur Levitt, Jr., *In Defense of Sarbanes-Oxley*, *WALL ST. J.*, June 14, 2004, at A16 (reporting NYSE CEO John Thain’s concern about the impact of Sarbanes-Oxley on America’s global competitiveness).

