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Giving at the Office On Corporate Boards

Officials From Nonprofits Spark Concern When Directors' Position Helps Raise Funds

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When companies look for outsiders to join their boards, they often turn to people such as Ellen Futter, the president of the American Museum of Natural History in New York. As corporations see it, the leaders of big nonprofits can bring independence and a broader view of social issues to a board. Ms. Futter serves on four: insurer **American International Group Inc.**, pharmaceutical maker **Bristol-Myers Squibb Co.**, the energy company **Consolidated Edison Inc.** and **J.P. Morgan Chase & Co.**, the nation's second-biggest bank.

For museum directors, university presidents and other nonprofit leaders, a corporate directorship offers a big plus too: connections that can lead to major donations. All four of the companies on whose boards Ms. Futter sits have made substantial contributions to her museum -- both during her nine years as president and before.

But those contributions create a potential conflict of interest: the possibility that money flowing from companies and their executives will make nonprofit officials beholden to the corporate management they are supposed to monitor.

REFORM PROPOSALS

The SEC is reviewing proposed rules on who is an "independent" corporate director.

The New York Stock Exchange proposal

Companies have to maintain boards with a majority of independent directors.

Certain committees, such as those overseeing audits, have to have all independent directors.

The director or an immediate family member can't be an executive officer of another corporation that received more than \$1 million, or 2% of its gross revenue -- whichever is greater -- from the listed company. The proposal doesn't refer to directors who work for nonprofits.

Nasdaq Stock Market proposal

Companies have to disqualify as "independent" a director who is an executive officer of a nonprofit to which the company gives \$200,000, or 5% of the nonprofit's annual revenue, whichever is greater.



Ellen Futter

Exhibit A is Enron Corp. The onetime energy-trading giant, its chief executive and affiliated foundations directed millions in donations during the 1990s to a Houston cancer center headed by Enron director John Mendelsohn, who served on Enron's now-famously-inattentive audit committee. (An Enron spokesman declines to comment. Dr. Mendelsohn has said the center doesn't depend heavily on Enron philanthropy.)

The potential problem goes far beyond the well-publicized Enron example. A Delaware Chancery Court judge ruled just last week that a supposedly independent investigative committee created by **Oracle Corp.**'s board was in fact fraught with "bias-creating relationships." One conflict: The two directors that constituted the panel -- a pair of Stanford University professors -- were asked to investigate controversial stock sales by fellow board members, some of whom had donated heavily to Stanford. The ruling allowed a shareholder lawsuit to go forward against

those board members, including Oracle's chairman and chief executive, Larry Ellison, who personally and through the company has given millions to Stanford.

Now, concern about this kind of problem is spurring the Nasdaq Stock Market to propose new rules encouraging companies to limit donations to nonprofits whose executives sit on the companies' boards. The New York Stock Exchange also wants to promote directors' independence, but proposals it has made don't specifically target nonprofit conflicts.

It isn't clear yet how tough the exchanges' new rules will be, but several corporate boards have begun to take action in anticipation of new restrictions. All this comes amid wide-ranging efforts to reform corporate boards after a wave of business scandals that boards did little to curtail.

Acting on her own, Ms. Futter resigned last year from the committee of Bristol-Myers directors that oversees the company's audits. She also stepped down last year from the **AIG committee** that helps set top executive salaries. Ms. Futter wanted to avoid "even the appearance of conflict" between her duties overseeing the companies and her fund raising, a spokeswoman for the natural-history museum says. The expectation of the new rules also factored into Ms. Futter's decisions, the spokeswoman says.

Ms. Futter, who declined to be interviewed, remains on the four corporate boards. She continues to serve on committees such as the Bristol-Myers corporate-governance panel, which considers questions of possible conflicts of interest of board members, among other duties. It's far from certain that the proposed rule changes would force any alteration in her relationships with the companies.

The museum chief's fund-raising success illustrates the potential problem created by nonprofit executives serving on corporate boards. In 2001, she received a bonus of more than \$150,000 on top of her \$450,000 annual salary, in part for opening the museum's \$210 million Rose Center for Earth and Space, according to the museum. On a wall honoring major contributors to the multimedia Rose Center, the list of 34 "friends" includes: Bristol-Myers, Con Edison and the Starr Foundation, which was endowed by AIG's founder and is run by current and former AIG executives. Ms. Futter served on the boards of all of the companies when they or their related foundations made these contributions.

Bristol-Myers, through the Bristol-Myers Squibb Foundation, was also the primary sponsor of the museum's 1999 exhibit, "Epidemic!" The foundation contributed \$1.2 million over four years for the display on

infectious diseases. In addition, Bristol-Myers has given the museum a total of \$700,000 for other purposes during Ms. Futter's tenure as president.

Ms. Futter, a lawyer by training and a former president of Barnard College in New York, has also raised large amounts of money from companies and foundations to which she has no direct connection. During her time at the museum, giving by the four companies on whose boards she sits has been "consistent with the philanthropic support these corporations have provided historically to the museum before Ms. Futter became president and/or joined these boards," the museum says in a written statement.

She served on the six-member Bristol-Myers audit committee from 1993 until 2002, chairing the panel in 1998 and 1999. In March, Bristol-Myers restated its financial results from recent years, acknowledging that from 1999 through 2001, it had overstated revenue by a total of nearly \$2.5 billion. The restatement raised its revenue by \$653 million for the first half of 2002. The company's financial reporting is now under investigation by the Securities and Exchange Commission and the Justice Department. The company has said it is cooperating with the government probes and doing its own internal investigation. There is no indication the government inquiries are focusing on board members.

Bristol-Myers says that its contributions to the natural-history museum haven't compromised Ms. Futter's role on its board. "Since 1990, she has provided important independent counsel and guidance to the company," Rebecca Taylor, a company spokeswoman, says.



Maurice Greenberg

AIG reached a similar conclusion, says company spokesman Joseph Norton. He points out that the Starr Foundation is for legal purposes independent of AIG. But Maurice Greenberg, AIG's chief executive, serves as chairman of the foundation, and other members of AIG's board serve on the foundation's board. Mr. Greenberg serves as a trustee of the natural-history museum, as well.

In 1999, the year Ms. Futter joined AIG's board, the Starr Foundation committed \$10 million over two years to build the museum's C.V. Starr Natural Science Building, a \$35 million, nine-story research facility in New York, with labs, exhibits and retail space. "We've been funding the museum long before Ellen was there," says Florence Davis, the foundation's president and formerly AIG's top in-house lawyer. "It has nothing to do with her being on AIG's board."

Anne Canty, the museum spokeswoman, says none of the corporate contributions had any effect on Ms. Futter's boardroom decisions. "Ms. Futter's role as a director is independent of her role as president of the museum," Ms. Canty says.

Con Ed and J.P. Morgan Chase say they continue to consider Ms. Futter to be an independent board member.

Current NYSE and Nasdaq rules impose no donation restrictions on a company appointing a nonprofit executive to its board. The NYSE requires that a majority of a company's audit-committee members be "independent," meaning they aren't executives of the company and don't have a "material" relationship with it, such as that of a paid consultant or a supplier.

In its proposed new rules, the Big Board would require that companies traded on the NYSE maintain boards

with a majority of independent directors. Certain committees, such as those overseeing audits, executive pay and director nominations, would have to have all independent directors under the NYSE proposal. The SEC, which must approve any new exchange rules, is reviewing the NYSE proposal, along with one from the Nasdaq. SEC action is expected later this year.

It's not clear what adoption of the NYSE approach would mean for companies and their nonprofit directors. The NYSE proposal would allow companies themselves to determine whether they have a material relationship with potential directors. Under the proposal, a board member generally wouldn't be independent if the director or an immediate family member were an executive of a company that received more than \$1 million, or 2% of its gross revenue -- whichever is greater -- from the corporation. But the proposal doesn't explicitly refer to directors who work for nonprofits, meaning that it would be up to corporations to decide whether they apply the new restriction to nonprofit executives, according to Ray Pellecchia, a spokesman for the NYSE.

The Nasdaq has proposed a restriction for its listed companies that does explicitly apply to nonprofits. The Nasdaq would disqualify as independent any director who is an executive officer of a nonprofit organization to which the corporation gives \$200,000, or 5% of the nonprofit's annual revenue, whichever is greater. The SEC hasn't said whether it intends to produce one consistent standard.

In the meantime, many nonprofit leaders and the companies on whose boards they sit defend their existing arrangements. Many companies look to the pool of nonprofit executives as a source of women and minority candidates who can provide diversity to a board.

Sister Maureen Fay, president of University of Detroit Mercy, a Catholic school, has been a director of **Bank One** Corp. or a corporate predecessor since 1985. She says board seats such as hers help nonprofit officials forge important connections and raise critically needed funds. In November 1999, she submitted a written request to Bank One's foundation for \$1 million as part of a broad university fund-raising campaign. The foundation pledged \$750,000, to be paid over five years.

Dr. Fay says, "Bank One's contribution had absolutely no impact on my decisions as a board member." She adds that she didn't use her director's clout to "exert any pressure" on the big Chicago bank to contribute.

Thomas Kelly, a bank spokesman, says that "neither Maureen Fay nor anyone at Bank One received any direct benefit from the contribution." The bank or its predecessor have supported the university since the 1950s. Dr. Fay has headed the university since 1990 and a predecessor since 1983. In 1994, a corporate predecessor of the bank donated \$1 million to endow a chair in business ethics at the school.

Soon after R. Gerald Turner was named president of Southern Methodist University in Dallas in 1995, he joined the board of retailer **J.C. Penney** Co., based in nearby Plano, Texas. In 1998, the company pledged \$1 million to create the J.C. Penney Center for Retail Excellence at SMU's Cox School of Business, which opened in 2001.

"Clearly, we don't think it influences his status" as an independent member of the J.C. Penney board, says Rita Trevino-Flynn, a company spokeswoman. A group of J.C. Penney executives, not the board, made the decision to give the gift, she says.

Mr. Turner says he has served diligently as a company board member. "When I'm in a Penney's board meeting, I don't think about the J.C. Penney Center for Retail Excellence," he says.

Similarly, Shirley Strum Kenny, president of the State University of New York at Stony Brook, says gifts to the school of more than \$40 million from Charles B. Wang didn't influence her work on the board of **Computer Associates International** Inc. Mr. Wang founded and once led the company. Dr. Kenny joined its board in 1994 and served through last year, when the board's new term limits required her to step down.



Shirley Strum Kenny

She served on the board's four-member audit committee until last August, acting as chairwoman of the panel from August 2000 until she stepped down. Some of the company's accounting practices during the late 1990s are now under investigation by the SEC and the Justice Department. There is no indication the federal probes are focusing on current or former board members.

Computer Associates, based in Islandia, N.Y., defends its accounting as proper and says it is cooperating with the government probes. Accounting practices under scrutiny were used during a period in which the company's rising share price boosted the value of restricted shares initially valued at hundreds of millions of dollars that Computer Associates gave Mr. Wang in 1998. He later gave some of the stock back.

"I did my corporate responsibilities with great seriousness," Dr. Kenny says. "I didn't see that as at all connected with what Charles did philanthropically." Personal gifts such as Mr. Wang's aren't specifically covered by the new rules proposed by the NYSE and Nasdaq.

Dr. Kenny says the Wang gift enhanced her reputation at the university, but she adds that "it doesn't enrich me." A friend of Mr. Wang's for more than two decades, she says she is "glad to take the credit" for convincing him in 1996 to pledge \$25 million to SUNY Stonybrook to build an Asian-American cultural center. The gift, the largest donation ever to the state university system, later grew to more than \$40 million.

Computer Associates itself gave SUNY Stonybrook about \$2.2 million during Dr. Kenny's eight-year tenure on the company's board. Mr. Wang, who stepped down as CEO in 2000 and as chairman last November, says his and the company's gifts had nothing to do with influencing Dr. Kenny. "SUNY Stony Brook is the local university to Computer Associates, and CA had been involved in their programs for years," he says. "The university's focus on learning and the interests of CA were similar."



Charles Wang

Robert Gordon, a company spokesman, says, "Mr. Wang's support of Stony Brook certainly didn't compromise anyone, especially the independence of former CA board member Dr. Shirley Strum Kenny."

While the SEC ponders the stock exchanges' reform proposals, some major companies have taken action on their own.

Automatic Data Processing Inc., the big computing-services concern in Roseland, N.J., is one of a handful of companies that have adopted guidelines pushed by the Council of Institutional Investors, a Washington-based trade group representing more than 130 pension funds with more than \$3 trillion in total assets. ADP last September capped its annual donations to a nonprofit of which a board member is an employee, officer or director at the lesser of \$100,000 or 1% of the total contributions the nonprofit receives per year. "From a company standpoint, we've always been chintzy," says Jim Benson, ADP's general counsel.

In the past nine months, others that have instituted similar but less stringent limits on contributions to try to avoid conflicts include: **Aetna Inc.**, **Dell Computer Corp.**, **Electronic Data Systems Corp.**, **General Electric Co.** and **Prudential Financial Inc.**

Dell, for example, in January began including its executives' individual charitable contributions in its determination of whether a nonprofit official should be considered an independent director. Dell says that on a case-by-case basis, it reviews the independence of a board member associated with a nonprofit if the company and its executives contribute more than 1% of the nonprofit's annual receipts. Michael Miles, a Dell director and former chief executive of Philip Morris Cos., now known as Altria Group Inc., says an individual executive's "contribution could be misunderstood by the outside world as a contribution that is meant to influence a board member's behavior."

The new policies at Dell and ADP haven't led to the removal of any directors, the companies say.

Some shareholders are growing skeptical of corporate-nonprofit relationships. A shareholder resolution that faulted **Verizon Corp.** for its "substantial material relationships" with several board members gained 23% of the vote at the New York-based phone company's annual meeting in April.

One of those Verizon board members was Hugh Price, who stepped down in April as president of the National Urban League, an African-American advocacy group. The Urban League has received more than \$2.7 million from Verizon and its predecessors since Mr. Price joined its board in 1995. Ivan Seidenberg, Verizon's chief executive and a member of the board of its corporate foundation, served on the Urban League's board until July.

Urban League spokeswoman Max Smith says the group "has enjoyed a long and productive relationship" with Verizon. "Every grant we've gotten from them has gone through a rigorous and competitive process with their foundation," she adds. Mr. Price says Verizon's donations "would have happened with or without my membership. Those funding decisions rested entirely with [Verizon], and my judgment as a board member was never influenced by them."

Verizon echoes Mr. Price, stressing that its support for the Urban League began long before he joined the board. Spokesman Peter Thonis says, "Mr. Price's membership on our board and funding we have provided to the National Urban League are unrelated thoughts."

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