

Overregulation spells disaster

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President-elect Obama, in light of recent financial market turmoil, has stated that our regulatory system has failed and that we need a complete overhaul of the regulatory structure to make it responsive to the financial markets of the 21st century.

I agree that something needs to be done to restore confidence and stability to the markets. History, however, says that more regulation and additional bureaucracy may not be the right answer.

The Enron and WorldCom failures captured headlines in 2000. Congress' solution was the Sarbanes-Oxley law. Perhaps this legislation was sound in theory, but in reality it cost companies billions of dollars to implement and has done little to improve corporate governance, sustain the long-term viability of companies or protect the investments of shareholders.

Government regulation and bureaucracy is not likely to result in boards, executives and companies acting in a more responsible way. Rather, the solution is to create a more responsible corporate governance system where the primary role of boards and executives is to ensure the long-term viability and profitability of a company, not investor desires for quarterly returns.

Here are a few simple steps that can provide positive governance results for companies and shareholders:

■ Boards need to focus more on the culture the chief executive officer and senior management is creating and spreading throughout the company.

Boards should spend less time listening to the CEO about culture and a lot more time listening to stories from employees, customers, vendors and other stakeholders about their experiences with the company. Imagine the outcome if the board of Enron had spent less time listening to management and more time listening to customers and employees.

■ Every board should include two members of the management team. An informed board needs more than just the CEO's opinion of events. Additional management insight will lead to better disclosure, discussion and decisions for the company.

■ Independent board members should be term-limited. Board members who have been serving for more than eight years are not independent or

objective; they are insiders. Fresh ideas, thinking and questions will improve the board and company.

■ Every board should have a current or former chief financial officer serving as a director and financial expert. Only someone who has sat in the CFO chair can appreciate balancing financial complexity and reality with the pressure for results from the CEO, board and investors.

■ Boards should not have more than 40 percent of their membership comprised of active CEOs. CEOs are time-constrained and more concerned with their company than their board duties. CEOs, by nature, are sympathetic to the plight of the current CEO. After all, they are facing the same issues with their boards.

■ Board members and senior management should be required to have "skin in the game." They should buy shares, not be given the right to get shares (options and stock grants) if the stock price goes up. Let them take real ownership risks along with their shareholders.

■ Every board should set performance expectations for directors. Each board member should be required to rate every other board member on his job performance against expectations. Expectations and performance ratings should be disclosed in the company's proxy. Underperforming board members will either improve, get voted out or withdraw rather than face the embarrassment of continued low marks.

At each meeting, board members should ask five questions:

■ Is what we're doing providing economic value to the company?

■ Is it legal?

■ Is it the right thing?

■ Is it in line with our published code of conduct, principles and culture?

■ What will be said about us or done to us when it becomes public knowledge?

Better governance comes from better culture, a culture of personal responsibility, not more regulations or new bureaucracies. Better governance comes from management and directors understanding and protecting the long-term viability and profitability of the company.

Let's hope that President-elect Obama and the new Congress offer real change to corporate governance. We deserve results, not platitudes.

Omaha World-Herald MONDAY, JANUARY 19, 2009

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OPINION

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