Chesapeake Backtracks on What Board Knew of CEO's Transactions

Wall Street Journal
By Nathan Koppel
April 26, 2012

Just last week, Chesapeake Energy Corp.'s general counsel, Henry Hood, said the company's board of directors was "fully aware of the existence" of Chief Executive Aubrey McClendon's financing transactions.

Thursday, the company backtracked, saying that it wished "to clarify" that statement.

While the board was "generally aware" that Mr. McClendon used his personal stakes in Chesapeake oil and gas wells as collateral for loans, the company said in a statement, it didn't know about specific transactions.

The shift signals that the board is trying to back away from Mr. McClendon's financial activities, corporate-governance experts said. Some of them also said it was unusual for a board to take issue with the company's lawyer in such a public fashion.

The board is "seeking to distance itself from the sweeping endorsement suggested by the general counsel's earlier statement," said Harvard Law School professor Lucian Bebchuk, adding that the board now seems to appreciate "the necessity of a more careful and detailed review of the transactions than has been undertaken in the past."

Neither the board nor Mr. Hood responded to requests for comment.

Mr. McClendon arranged to borrow more than $1 billion using the stakes in oil and gas wells he has been granted under an unusual perk that the company has extended to him for years.

The Wall Street Journal reported that entities controlled by Mr. McClendon were in debt to EIG Global Energy Partners, a private-equity group, at the same time that firm was negotiating to buy hundreds of millions of dollars of Chesapeake assets.

Some governance experts are critical of Chesapeake directors for not acting sooner.

The board had a duty to learn about the particulars of Mr. McClendon's investments, since they raise possible conflicts of interest, said Henry Hu, a professor at the University of Texas School of Law. "The board's statement raises questions about whether it was as careful as it should have been."

Ben Heineman, a former General Electric Co. general counsel who teaches corporate governance and business ethics as senior fellow at Harvard's schools of law and government, said the Chesapeake board, in effect, is declaring that it would "rather just look ill-informed and negligent than complicit in McClendon's deals."