Why Corporate Governance Matters to Everyone

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So many of the problems we face today result from poor decision-making by private corporations. Prominent examples include the Gulf oil spill and the seriously weakened financial sector, which is imperiling the rest of our economy. However, so many who describe themselves as liberals or progressives seek to address such problems with more government regulation and programs instead of by preventing the bad decisions at the source, which is likely to be more efficient from a resource utilization perspective.

That is, having government do or prohibit something is inherently more costly than having the private sector get to the same result on its own as a result of the cost of the government. It is also arguably less effective because the government is not the direct stakeholder and does not have the same access to information or incentives as do properly informed, incentivized private actors. Of course, as we currently see, using government programs to rectify problems created in the private sector is the most expensive of all the alternatives. How does one get better decisions in the private sector?

While there is no foolproof way to prevent such bad decisions, many analysts believe that the field of "corporate governance" is a very good place to start. This field involves efforts to get the right people and the right information into the decision-making process so as to enhance the likelihood of a "good" -- or at least non-disastrous -- decision. It's hardly a secret that for too long, many business decisions have resulted from inadequate deliberation by an "old boys' club" which did not reflect multiple viewpoints or sufficient consideration of risks and benefits. The field may at first glance seem like a dusty academic area, but it is actually fundamental to the well being of all Americans.

In recent years, corporate governance scholars such as Lucian Bebchuck of Harvard Law School, Nell Minow of The Corporate Library and James McRitchie of CorpGov, activist investors such as CalPers, CalSTERS, Carl Icahn, Andrew Shapiro and Bill Ackman and, to some extent, the Delaware courts, have sought to change this situation by facilitating better process and more inclusive boards of directors. A major step forward is the inclusion in the new financial regulation bill of expanded proxy access for minority shareholders in public company board of director elections, in order to get more viewpoints into the boardroom. Arguably in the same vein, is the inclusion in the bill of a non-binding 'say-on-pay' vote for shareholders.

Despite these improvements, it may come as a surprise that corporate law still gives officers and directors a largely free pass for even disastrous outcomes of their decision-making. In a recent law review article, the author has publicly lamented this situation and suggested changes in corporate law so that those responsible for horrible decisions bear some financial risk from their consequences.

In that our federal fisc. is already stretched to the breaking point, with trillion dollar deficits as far as the eye can see, we need to be looking for ways of preventing debacles so that we

minimize future burdens on public resources. Yet, one rarely hears those advocating more government action or regulation of business speak of ways we can introduce real incentives for business to meaningfully regulate itself. I don't know if this is because they feel that business is inherently evil, so that efforts to improve corporate governance are futile, if they don't understand business or corporate law, don't understand the connection between business decision-making and public consequences, or some other reason. However, I strongly advocate that this orientation change in the near future, as we are in need of some out-of-the-box thinking as to how to reduce the demands on government, and improved performance in the corporate sector is a good place to start. One can justifiably advocate different approaches to improvement of governance, but the issue needs to be on the radar screen of anyone with a serious interest in public policy.

For that matter, even conservatives in their zeal to reduce government spending need to seriously consider ways to avoid the need for such spending, and recognize that while the business sector is a net major positive for our society, there is significant room for improvement in its performance and that such improvement is essential for our general welfare.

It is no longer realistic to look to government to rectify problems caused in the private sector, or to simply ignore such problems and their broader consequences. We all need to look for innovative ways to avoid such problems, such as using the governance process to do so.