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Credibility of the Capital Markets Dependent on Corporate Governance

By Ira M. Millstein

On Wednesday, August 27, representatives of NACD, the NASDAQ stock exchange, and the investment community celebrated the historic, educational alliance between NACD and NASDAQ. Ira M. Millstein, senior partner at Weil, Gotshal & Manges LLP, and NACD board member, delivered the following remarks.

We are here today to kick off the cooperative efforts between the NACD, which is devoted to the betterment of corporate governance, and the NASDAQ, which represents a significant part of our capital markets. The link between the quality of corporate governance and the integrity of our financial markets is indisputable—their relationship is essential.

The credibility of the capital markets over the long term, as well as the important task of cultivating a renewed trust in those markets today, depend in large part on the credibility and trust investors place in the corporations whose shares are sold and traded in those markets. To talk simply about renewing the public's faith and confidence in the capital markets has little content—the meaningful discussion must be about renewing faith and confidence in the corporate securities traded in those markets.

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About NACD

National Association of Corporate Directors (NACD), an independent not-for-profit organization founded in 1977, is the country's only membership organization devoted exclusively to improving corporate board performance. The NACD conducts educational programs and standard-setting research, and provides information and guidance on a variety of board governance issues and practices. Membership comprises board members from U.S. and overseas companies ranging from large publicly held corporations to small over-the-counter, closely held, and private firms. NACD lists all interested members on The Director's Registry, which is used by member companies and others that seek qualified directors. With chapters in many major cities providing educational programs and networking opportunities, NACD operates at both a national and local level. To educate the corporate community and to provide networking links among NACD members, the NACD holds an annual Corporate Governance Conference, where it presents a Director of the Year Award.



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Confidence and trust depend not just on a company's economic performance, which for any company will wax and wane, but on how that corporation is governed—in other words, how it manages its affairs, its internal checks and balances, and, most importantly, its accountability to its owners. Taken together, the well-governed corporation better responds to the changes and risks inherent in any business. Today, more than ever before, companies are judged by investors—and graded by analysts and a whole cottage industry of governance raters—on important aspects of their corporate governance.

Moreover, what the NACD and NASDAQ are doing here today, viewing it from 20,000 feet, has global implications. Corporate governance has to do with the legitimacy and credibility of the corporation, which is, as Micklethwait and Wooldridge noted in *The Company* (2003), “The most important organization in the world . . . The bases of prosperity in the West and the best hope for the future of the rest of the world.” Through perpetual life and limited liability, the joint stock corporation has provided a means of broad access to capital and, thereby, provided jobs, economic growth, and stability, wherever permitted, in every corner of the globe.

Thus, helping the indispensable corporation attract appropriate investment and act appropriately as a citizen is a very necessary step at this point. This is far from the first time that the corporation and its governance, or lack of governance, has led to intense criticism, and further reform. Corporations, as they developed, were often corrupt and inefficient state-granted monopolies. At times, they even became governments of their own raising their own armies, like the British East Trading Company. They regularly precipitated the bursting of bubbles, with effects perhaps worse, given the times, than today's (for example, the French Mississippi Company, England's South Sea Company, and Dutch tulip mania).

From the earliest of times we learned there would always be a gullible investor to be taken in by a joint stock company, and reform after reform has endeavored to protect that investor.

Indeed, our own Adam Smith warned that the tendency of managers, and even directors, to enrich themselves with other people's money, using the joint stock corporation, was a dangerous device for the economy. As a result, he would have severely limited the joint stock corporation to certain more regulated industries such as canals, banking, and insurance. Smith's worry may have been prescient, as evidenced by the recurring pattern of multiplying corporate abuses followed by regulatory reform. We surely don't want the end of the road to be as Smith described—intrusive regulation of every joint stock corporation.

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So far, despite the monopolies, failures, corruption, bubbles, and the like, it seems that the corporation will continue to be here. It has functioned, been shaped, been improved, been restrained and circumscribed, been reformed, yet continues to thrive. It is the organization which, when permitted, has brought economic growth and jobs to every corner of the globe. Feared by those whose interests it doesn't promote, loved by those whose interests it does promote, recognized as necessary by all, reformed regularly by politicians, sometimes by popular demand, the corporation continues. We hope it will continue, and its shares will remain available on NASDAQ and other markets to the sophisticated and unsophisticated alike.

The NACD, as pragmatists, will try again to make the corporation more credible and accountable—to make its shares safer for investment through better self-governance. We recognize that the bubble of the 2000s is yet another opportunity for further reform. NACD will move this reform effort along, without complaint. It's part of the continuum. ■

Ira M. Millstein, senior partner in the international law firm of Weil, Gotshal & Manges LLP, served as chairman of the NACD Blue Ribbon Commission on Director Professionalism and co-chair of the NYSE and NASD Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees. Mr. Millstein is chairman of the Private Sector Advisory Group, Global Corporate Governance Forum, sponsored jointly by the Organization of Economic Cooperation and Development and the World Bank. Mr. Millstein also serves on the NACD board of directors, and his firm is an alliance partner of the NACD.

Director Summary: Ira M. Millstein spoke at NASDAQ about the need for increased credibility of corporations in order for capital markets to survive and thrive without increased regulation.