Business Roundtable

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October 31, 2012

By email to policy@issgovernance.com

Global Policy Board
Institutional Shareholder Services Inc.
702 King Farm Boulevard, Suite 400
Rockville, MD 20850

Ladies and Gentlemen:

Re: 2013 Proposed Voting Policy on "Board Response to Majority-Supported Shareholder Proposals (U.S.)"

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies with more than $7.3 trillion in annual revenues and nearly 16 million employees. Business Roundtable member companies comprise nearly a third of the total value of the U.S. stock market and invest more than $150 billion annually in research and development—equal to 61 percent of U.S. private R&D spending. Our companies pay $182 billion in dividends to shareholders and generate nearly $500 billion in sales for small and medium-sized businesses annually. Business Roundtable companies give more than $9 billion a year in combined charitable contributions.

Business Roundtable appreciates the opportunity to participate in the annual process that Institutional Shareholder Services (ISS) uses to formulate its proxy voting policies, and we welcome the ability to comment on some of the policy changes that ISS is considering for 2013. In this regard, we have serious concerns about ISS' proposed changes to its voting policy on board responsiveness to majority-supported shareholder proposals. As an initial matter, the revised policy that ISS is proposing raises major issues relating to director accountability and fiduciary duties. In addition, if adopted, the revised policy would have a significant impact on companies in future years. For this reason, we strongly believe that ISS should provide further opportunity for input and dialogue, beyond the current comment period, before making any changes in this policy. Similarly, if ISS adopts the revised policy, we strongly believe that a transition period is essential.

1. The revised policy that ISS has proposed raises major issues relating to director accountability and fiduciary duties.

As you know, under ISS' current policy on board responsiveness to majority-supported shareholder proposals, ISS issues negative voting recommendations if the board fails to act on a proposal that received a majority of shares <u>outstanding</u> the prior year, or a majority of the votes <u>cast</u> <u>both</u> in the prior year and in one of the two years before that. Under the revised policy, ISS would recommend votes "against" or "withhold" votes on all incumbent directors if the board failed to act on a shareholder proposal that received support from a majority of votes cast at the prior year's annual meeting.

The approach reflected in the revised policy contravenes the fiduciary duties of directors and is inconsistent with the allocation of powers between boards and shareholders under state corporate law. This allocation of powers is discussed in more detail in Business Roundtable's *Corporations 101* (July 2008) (attached), which is a primer on the role of corporations and the relationships between the three principal groups (boards, management and shareholders) involved in the governance of corporations. Under state corporate law, a corporation's board of directors is responsible for overseeing the management of the corporation's business. Shareholders provide capital, elect directors and approve major transactions, but they do not have any liability for corporate actions and are not involved in day-to-day management.

In carrying out their responsibilities, directors have fiduciary duties to the corporation and its shareholders. As discussed in Business Roundtable's *Principles of Corporate Governance (2012)*, shareholders should expect that corporations will be responsive to issues and concerns that are of widespread interest to their long-term shareholders. However, state corporate law does not contemplate that the board of directors serves as a mere conduit for implementing the will of shareholders. Rather, directors are expected—and indeed, have a legal obligation—to exercise informed, independent judgment to make decisions that are in the best interests of the corporation and its shareholders. In addition, the revised policy may have the undesirable effect of reducing shareholder engagement. In this regard, boards may be hesitant to engage in discussions with shareholders about the concerns prompting their proposals and alternatives for addressing these concerns.

For these reasons, Business Roundtable opposes the revised policy and its automatic trigger of a negative voting recommendation where the board "fails to act on" a shareholder proposal that receives majority support. We believe that a corporation's board of directors should seriously consider issues raised by shareholder proposals that receive substantial support. However, directors must decide the appropriate response to shareholder proposals based on the exercise of their fiduciary duties.

2. The revised policy that ISS has proposed will have a significant impact on companies in future years, so further opportunity for input and dialogue is warranted.

ISS released its proposed 2013 policy changes on October 16, 2012 and the public comment period closes on October 31. We appreciate that ISS offers investors and companies the opportunity to comment on proposed policy changes. However, the comment period is short and the time frame for finalizing voting policies is tight. Moreover, companies had little warning that ISS was considering a policy change in this area. Although the ISS 2012-2013 Policy Survey included a question about whether boards should implement shareholder proposals that received support from a majority of shares cast in the previous year, the survey covered a number of topics and only a small number of investors and companies responded to the survey (about 370 total, including 97 institutional investors).

In view of these considerations, Business Roundtable believes that the current comment period is inadequate to give the revised policy the thorough review and evaluation that it deserves. Instead, we encourage ISS to defer finalizing the revised policy at this time and to use the comment period as a starting point for further dialogue about this issue. We believe that this would facilitate a better approach to addressing situations where ISS believes that boards have not been responsive to shareholder proposals.

3. If ISS adopts the revised policy as proposed, the policy should include a transition period.

If ISS adopts the revised policy as proposed, the policy would apply for the 2013 proxy season. This means that companies where shareholder proposals received a majority of votes cast in 2012 would have only a matter of weeks to implement these proposals in a manner satisfactory to ISS. Otherwise, their incumbent directors would face the possibility of negative voting recommendations at the 2013 annual meeting, a drastic and unanticipated result. In addition, efforts to respond to these majority-supported shareholder proposals are already well underway at the affected companies. Similarly, companies that have received shareholder proposals for the 2013 proxy season have already begun working to address these proposals, and the shareholder concerns raised by these proposals, within the current framework of law and practice applicable to shareholder proposals, including ISS' current voting policy on board responsiveness to majority-supported shareholder proposals.

ISS' revised policy would result in an upheaval of these efforts, particularly for companies that received majority votes in 2012. In light of this, if ISS adopts the revised policy at the conclusion of the current comment period, we believe that it is critical that ISS provide at least a one-year transition period. During that period, ISS could consider actions that companies have taken in response to the majority votes, as disclosed in the proxy statement. This would be similar to ISS' current approach where a company's prior year say-on-pay proposal receives support from less than 70 percent of votes cast. In that situation, ISS evaluates the company's disclosures about actions taken to respond to the shareholder vote when making voting recommendations on the company's current year say-on-pay proposal and its compensation committee members.

We appreciate the opportunity to express our views as part of the 2013 policy formulation process. Please do not hesitate to contact Maria Ghazal, Vice President and Counsel at Business Roundtable, at (202) 872-1260 if we can provide further information.

Sincerely,

John Engler

JE/mg

Business Roundtable℠

Corporations 101

The Role of Corporations and Corporate Governance in Maintaining U.S. Competitiveness

July 2008

Business Roundtable

Business Roundtable (www.businessroundtable.org) is an association of chief executive officers of leading U.S. companies with over $4.5 trillion in annual revenues and nearly 10 million employees. Member companies comprise nearly a third of the total value of the U.S. stock market and represent more than 40 percent of all corporate income taxes paid to the federal government. Collectively, they returned more than $114 billion in dividends to shareholders and the economy in 2006.

Roundtable companies give more than $7 billion a year in combined charitable contributions, representing nearly 60 percent of total corporate giving. They are technology innovation leaders, with $90 billion in annual research and development (R&D) spending — nearly half of the total private R&D spending in the U.S.

Corporations 101

The Role of Corporations and Corporate Governance in Maintaining U.S. Competitiveness

A White Paper by Business Roundtable | July 2008

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I. Introduction

In an era of increasing global competition and economic uncertainty, understanding the role that corporations play is more important than ever. Therefore, Business Roundtable has prepared this paper to provide a brief introduction to corporations, the economic benefits they provide, their governance structure and their record of reforms.

Business Roundtable is an association of chief executive officers (CEOs) from more than 160 leading U.S. corporations. Combined, Business Roundtable member corporations:

- Employ nearly 10 million people.
- Are technology innovation leaders, with $90 billion in annual research and development (R&D) spending — more than 40 percent of the total private R&D spending in the United States.
- Contribute $7 billion to charity each year, representing nearly 60 percent of total corporate giving.
- Generated $114 billion in dividends to shareholders in 2006.
- Paid $179 billion in corporate income taxes in 2006 — nearly 40 percent of corporate income tax paid that year.
- Provide health care for 35 million people.

Business Roundtable Initiatives

Business Roundtable Members among 2008 *FORTUNE* Most Admired Companies

II. The Role of Corporations

Corporations — legal entities created under state law that are designed to generate a profit — are the engines that drive the growth of the U.S. economy and create wealth worldwide. Together, U.S. corporations:

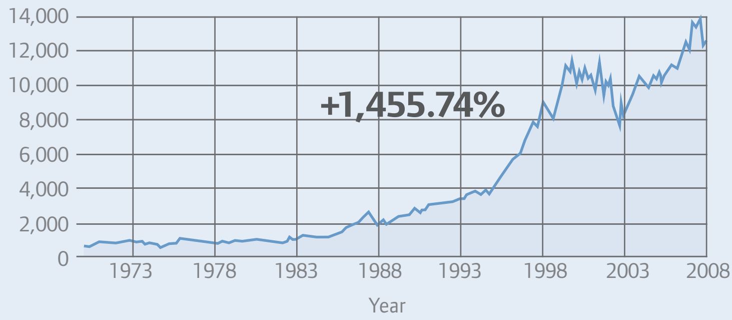
- Create millions of jobs.
- Produce innovative products and services that affect every aspect of daily life.
- Generate economic prosperity for employees and shareholders.

Many individuals invest in corporations directly by purchasing shares or indirectly by purchasing mutual funds or contributing to pension and retirement plans. More than 6,800 companies are publicly traded in U.S. stock markets, including on the New York Stock Exchange, the Nasdaq and the American Stock Exchange. When individuals buy shares in a corporation, they provide the corporation with the necessary capital to grow. But investment in public corporations also provides individuals with the opportunity to profit — through increases in stock prices and dividends — from the wealth generated by companies. Investing in a corporation is voluntary, and shareholders can change their investments at any time.

Investing in Success

- If an individual invested $100 in 1950 in the S&P 500 — a stock market index containing the stocks of 500 blue-chip corporations — today that investment would be worth about $57,000.
- The S&P 500 registered an average annual return of:
  - — *11.8 percent between 1950 and 2007;*
  - — *11.92 percent over the past 20 years (1988–2007); and*
  - — *12.4 percent over the past five years (2003–07).*

Dow Jones Industrial Average Index,
Jan. 9, 1970, to Jan. 9, 2008

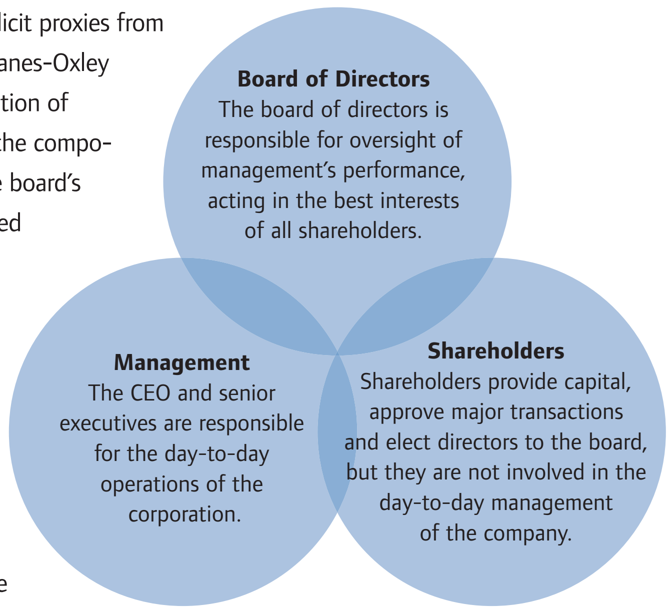


III. Corporate Governance

Corporations are governed by three principal groups:

- The board of directors,
- Management and
- Shareholders.

The relationship and the allocation of powers among these groups are defined primarily by state corporate law and a corporation's charter and bylaws. Historically, the federal government's role in corporate governance has been limited. The U.S. Securities and Exchange Commission (SEC) plays a role by promoting full disclosure of information to protect investors and establishes procedures for companies to solicit proxies from shareholders. In 2002, the Sarbanes-Oxley Act increased the federal regulation of the accounting profession and the composition and responsibilities of the board's audit committees, and it provided for executive certification of financial statements.



Board of Directors

The board of directors is responsible for oversight of management's strategy and performance. Its role is to make decisions in the best interests of the corporation's shareholders, taking into account the interests of other stakeholders. The board considers the advice, reports and opinions of management, counsel and auditors and also seeks independent advice when appropriate.

The Coca-Cola Company 2007 Annual Report

> "Some 10 percent of CEOs currently heading the top S&P 500 companies received undergraduate degrees from Ivy League colleges, according to a survey by executive recruiter Spencer Stuart. But more received their undergraduate degrees from the University of Wisconsin than from Harvard, the most represented Ivy school."
>
> — *The Wall Street Journal,* Sept. 18, 2006

Primary Duties

Primary duties of the board include:

- Selecting and overseeing the CEO, who runs the corporation with senior management on a daily basis.
- Monitoring management's performance and adherence to corporate and ethical standards on behalf of shareholders.

Membership

Members of the board bring a wide range of knowledge and experience but do not represent any particular constituencies. Board members include:

- **The chairman,** who leads the board and is elected to the position by the other members of the board.
- **Independent directors,** who are not affiliated with the corporation in any material capacity.

Board Committees

Board members also participate on committees with more specific duties, such as the:

- **Governance and Nominating committees,** which oversee effective corporate governance and identify and evaluate candidates for board positions. Nominated candidates are then voted on by the shareholders.
- **Audit Committee,** which supervises the corporational relationship with its auditor and oversees the corporation's financial reporting process.
- **Compensation Committee,** which determines the corporation's overall compensation structure, policies and programs.

Members of these committees are required by the New York Stock Exchange, Nasdaq and American Stock Exchange to be independent directors.

Management

The CEO and senior executives are responsible for running the day-to-day operations of the corporation and keeping the board informed of the status of these operations.

Primary Duties

Primary duties of the CEO and senior management include:

GE Board of Directors

- Performing strategic planning, including developing and implementing annual operating plans and budgets.
- Selecting qualified management and establishing an effective organizational structure.
- Identifying and managing corporate risks.
- Reporting corporate finances accurately and transparently and making timely disclosures.

Key Positions

- **Chief executive officer (CEO).** The CEO is the highest-ranking executive in the corporation. The CEO's main responsibilities include developing and implementing high-level strategies, making major corporate decisions, managing the overall operations and resources of the corporation, and acting as the main point of communication between the board of directors and corporate operations.
- **Chief financial officer (CFO).** The CFO is responsible for overseeing the financial activities of the entire corporation, including certifying financial statements, monitoring cash flow and performing financial planning.
- **Chief legal officer (CLO) or general counsel.** The CLO is responsible for providing legal advice to senior executives and the board on issues including compliance and litigation.
- **Chief operations officer (COO).** The COO is responsible for managing the corporation's day-to-day operations.

The Changing Face of CEOs

Yesterday's CEOs

John D. Rockefeller,
Standard Oil

John Pierpont Morgan,
JP Morgan

"Today's executives are younger, more likely to be female and less likely to have Ivy League educations. They make their way to the executive suite faster than ever before … and they hold fewer jobs along the way. They spend about five years less in their current organization before being promoted and are more likely to be hired from the outside."

— Wharton Center for Human Resources

Today's CEOs

Anne Mulcahy, Xerox

- First female CEO in the company's history.
- English and journalism major with 16 years of experience in sales.
- No. 2 on *FORTUNE* magazine's Most Powerful Women in 2007.
- Currently chairman of the Business Roundtable Corporate Leadership Initiative.

Kenneth Chenault, American Express

- CEO and chairman of American Express since 2001.
- Third African-American CEO of a *FORTUNE* 500 company.
- Attended the Waldorf School of Garden City, received a bachelor's degree in history from Bowdoin College in 1973 and a Juris Doctor from Harvard Law School in 1976.
- Currently co-chair of Business Roundtable.

Fred Smith, FedEx

- Founded FedEx in 1971.
- Attended Yale University, where he earned a bachelor's degree in 1966.
- Former officer of the U.S. Marine Corps (1966–70), who served in Vietnam and received the Silver Star, the Bronze Star and two Purple Hearts.
- Served on the boards of St. Jude Children's Research Hospital, the Mayo Foundation, the U.S. Air Transport Association, the International Air Transport Association and the Cato Institute.
- Member of the Aviation Hall of Fame and inducted into the Junior Achievement U.S. Business Hall of Fame in 1998.

Shareholders

Shareholders voluntarily invest in the corporation by buying shares of its stock. Therefore, shareholders are sometimes referred to as the "owners" of the company. Shareholders provide capital, elect directors to the board and approve major transactions, but they do not have any liability for corporate actions and are not involved in day-to-day management.

Shareholder rights include:

- Voting to elect directors,
- Approving mergers and acquisitions, and
- Approving equity plans.

By the end of 2007, U.S. households combined directly owned $5.4 trillion in equities, more than any other economic sector or institution, according to the Federal Reserve. But shareholders also include mutual funds, pension funds, private equity funds, overseas investors and sovereign wealth funds. The Federal Reserve also reports that U.S. households hold about $5.1 trillion in mutual funds, the majority of which are corporate equities.

IV. Corporate Governance Reforms

The role and responsibilities of corporate boards in the United States has become a focus of attention in recent years. In response to requests from investors, corporations have taken the initiative to implement key governance improvements. Today, the debate centers on the role of the board in mitigating risk, the relationship between CEOs and boards, and the independence of corporate boards.

Relationship of the CEO and Board

Corporate scandals such as Enron and WorldCom, which caused devastating financial losses for shareholders, have resulted in today's boards demanding more accountability from CEOs. As a result, annual CEO turnover has grown, rising 59 percent from 1995 to 2006, according to the *CEO Succession White Paper 2006* by Booz Allen Hamilton. The average tenure of a Business Roundtable CEO is four years.

In principle and practice, many boards support pay for performance for senior executives. Forty percent of Business Roundtable companies reported adjusting the pay-for-performance element of senior executive compensation in 2007.

Board Independence

The presence of independent representatives on the board, who are capable of challenging the decisions of management, is one way to protect the interests of shareholders and other stakeholders.

Timeline of Reform

To comply with the Sarbanes-Oxley Act and enhance accountability, S&P 500 corporations have increased the percentages of independent directors on their boards.

Increases in Independence Levels of Boards

Source: RiskMetrics Group

A 2007 Business Roundtable CEO survey showed that U.S. corporations continue to increase the percentage of their independent board members and independent board leadership positions.

- Ninety percent of Business Roundtable corporations reported that 80 percent of their board members were outside directors.
- Nine out of 10 companies had an independent chairman, lead director or presiding director.
- The percentage of corporations with an independent chairman has continued to increase, growing by 120 percent between 2006 and 2008.
- The percentage of companies that have adopted majority voting for directors leapt to 82 percent between 2006 and 2007.

In addition, fewer CEOs are serving on other boards, given the enhanced time commitment of serving on a board of directors. **Three-quarters of Business Roundtable CEOs serve on no more than one other public company board.**

V. Governance Challenges for Maintaining U.S. Competitiveness

As the United States seeks ways to maintain its competitive edge in the global marketplace and generate prosperity for individuals and the economy, a series of challenges must be addressed.

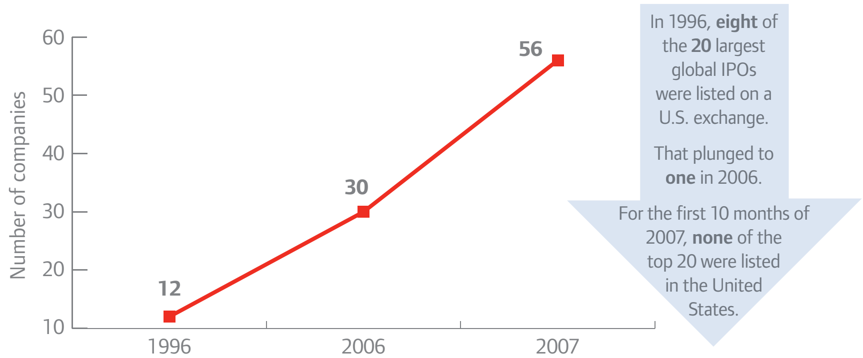
> "The U.S. public equity markets must evolve and improve if they want to remain a major source of international financing."
> — McKinsey Financial Services *Senior Executive Survey: Sustaining New York's and the U.S.' Global Financial Services Leadership*

Unlevel Playing Field with Foreign Markets

Foreign companies increasingly are delisting shares from U.S. exchanges, according to a survey by McKinsey Financial Services.

- The number of delisted foreign companies rose from 12 a decade ago to 30 in 2006 and a record 56 from January to October 2007.
- In 1996, eight of the 20 largest global initial public offerings (IPOs) of stock from private companies were listed on a U.S. exchange. That plunged to one in 2006, and for the first 10 months of 2007, not one of the top 20 were listed in the United States.

Foreign Companies Delisting from U.S. Exchanges



Source: McKinsey Financial Services, *Senior Executive Survey: Sustaining New York's and U.S.' Global Financial Services Leadership*

Competition from Private Equity

Hedge funds and private equity firms can build a substantial stake in a corporation and therefore may have disproportionate power in the boardroom. Often, they have hostile intentions, such as elimination of jobs, sale of assets or a focus on short-term gains at the expense of long-term shareholder value.

External Factors Affecting U.S. Competitiveness

Financial Times
Tuesday, March 25, 2008
Private Equity Goes on the Attack

The Wall Street Journal
Wednesday, June 4, 2008
Politics by Proxy

The Wall Street Journal
Thursday, March 20, 2008
Sovereign Wealth Funds and the Problem of Self-Interest

Abuse of the Resolution Process

Shareholder resolutions have historically been limited to a handful of proposals. In recent years, there has been an explosion of proposals promoting social issues or political agendas that are not necessarily in the best interests of all shareholders. Currently, more than 1,000 resolutions are filed each year with S&P 500 companies.

Companies are forced to spend significant time and shareholder resources responding to these proposals, including review by counsel, correspondence with the SEC and possible inclusion on the company proxy.

While some proposals address governance issues, many are not relevant to the business of the corporation. These issues are appropriate for public policy debates but not a company proxy statement. Increasing time and resources spent on this process adversely affects profitability, shareholder returns and competitiveness in a global economy.

Recent Examples of Shareholder Resolutions

- Developing "broad social standards"
- Reviewing "animal welfare standards"
- Reporting political contributions
- Issuing reports on the "impact of the flat tax"
- Reporting on "open space policies"

Growth of Sovereign Wealth Funds

Sovereign wealth funds, which may not be subject to the same rules and/or have the same governance structure as U.S. funds, increasingly are investing in U.S. companies.

Wealth of Nations

Flush with capital, sovereign wealth funds are exerting growing influence on world markets.

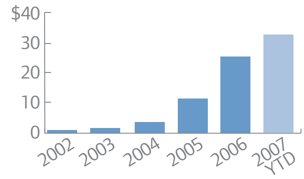
Largest Funds

Country	Estimated assets
United Arab Emirates*	$250 billion to $875 billion
Norway	$308 billion
Saudi Arabia	More than $250 billion
Kuwait*	$160 billion to $250 billion
Singapore*	More than $200 billion
China	$200 billion

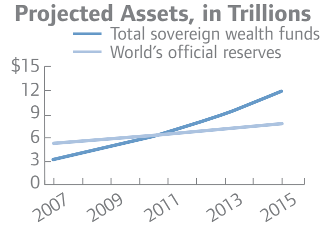
Biggest Deals in 2007

Target (stake)/ Country of acquiring fund	Value, in billions
Citigroup (4.9%)/ United Arab Emirates	$7.5
Blackstone (9.3%)/ China	$3.0
China Everbright Bank (70.92%)/China	$2.7
Barclays (1.77%)/ Singapore	$2.0
STATS ChipPAC (48.2%)/Singapore	$1.7
Standard Chartered (3.74%)/Singapore	$1.4

Acquisitions by Sovereign Wealth Funds, in Billions



Projected Assets, in Trillions



*Country has more than one fund. Singapore's funds include Temasek Holdings, a $100-plus billion government fund managed by a private company.

Source: *The Wall Street Journal,* Dec. 1, 2007

As of Dec. 1, 2007, *The Wall Street Journal* reported that:

- Singapore's Temasek Holdings was the most active buyer in 2007, spending $8.5 billion on 18 deals.
- Abu Dhabi Investment Authority spent $7.5 billion, and Dubai International Capital spent $5.7 billion.
- China's state-owned China Investment Corp. paid $3 billion for a 9.3 percent share of private-equity group The Blackstone Group L.P.
- Middle Eastern firms and funds spent $82.4 billion, compared with $30.8 billion in 2006 and $4.5 billion in 2004, according to Dealogic.
- The United States was the biggest recipient of sovereign wealth funds in 2007, receiving $11.8 billion.

> "Most [sovereign wealth funds] are not transparent or publicly accountable, and we know little about their governance structures or fiduciary controls. So the bottom line is that we don't know if their decisions are made exclusively on an economic basis."
>
> — U.S. Sen. Charles Schumer, D-NY

VI. Conclusion

The U.S. corporate structure has helped make America the greatest driver of wealth creation in the world. We must safeguard and preserve this structure.

Boards, elected by and working in the interests of shareholders, should continue to direct management, strategy and decisions. Changing this governance model may make the U.S. market and corporations less competitive in a global economy; diminish productivity; and make corporations more vulnerable to pressure from private equity firms, hedge funds, sovereign wealth funds, politics and special interests.

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