Corporate Governance: Overview, Case Studies, and Reforms

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This book provides a unique, integrated approach to the study of governance at public companies. It combines my text and analysis, primary materials, secondary sources, finance and economics studies, and questions.

The book begins with two overview chapters. These should be particularly helpful in courses for which students are writing papers. Having a sense for the breadth of issues that law and regulation already address will help students select paper topics that will advance, rather than duplicate, work that has already been done.

As it progresses, the book provides an in-depth look at WorldCom and Enron, with (in later chapters) very significant information about Lehman Brothers, a good deal on AIG, and enough about Bear Stearns to appreciate its frighteningly swift demise. The text explains concepts needed to understand the events at these companies, including accounting issues covered in the WorldCom and Enron readings, and the credit crisis central to the events at Lehman Brothers, Bear Stearns, and AIG. The book thereby addresses the core problem that most law school students—even those selecting a large number of business courses—do not know what corporate governance is, have not been a corporate director, have never witnessed a board meeting, may not have a significant accounting background, and may not have been studying business developments during the credit crisis.

After describing the events at WorldCom and Enron, the book sets out the resulting reforms. In the course of examining governance at Lehman, Bear Stearns, and AIG, the book describes reforms put in place during the credit crisis and then describes post-crisis compensation reform in the financial sector. Along the way, the book addresses reforms to strengthen shareholder voting. And the book analyzes the role of sovereign wealth funds, activist hedge funds, and proxy advisers. An entire chapter addresses in detail CEO compensation—its components, whether the amounts paid are too high, whether those amounts results from a competitive market, and whether various forms of equity compensation encourage false financial reporting or excessive risk-taking. The book ends with chapters asking how we might evaluate the reforms, discussing the meaning and possible governance implications of corporate social responsibility, and setting out the role that lawyers play in governing a public company.

In designing a course using this book, a faculty member can chose to focus on one or two of the corporate failures listed above instead of teaching
them all. In the same way, the book is friendly to professors who want to concentrate on particular governance actors—boards of directors, outside auditors, activist shareholders, and proxy advisers. Similarly, the chapters and table of contents permit faculty members to teach all of the reforms I include, or select a set that the professor finds most interesting or provocative.

I have tried hard to include not only descriptions of laws, regulations, and listing standards, but also the key text within them. I believe that this book is complete in itself and can be fully effective without any statutory supplement.

Two formatting choices deserve your attention before you plunge into the pages. First, where I include footnotes from a source that I quote, I have retained the footnote numbers used in the source and placed them in brackets. The numbers for the footnotes that I prepared have no brackets around them.

Second, I have retained the formatting and organizational scheme in long excerpts. This includes internal section headings, with letters or numbers. The long quotations are indented and therefore easy to distinguish from my text.

As a last user note, the book contains a large number of images. These include not only helpful charts and graphs but also documents that the boards of WorldCom and Enron saw. I located these images in a variety of sources, including reports of congressional hearings.

To improve readability, 3Crown Creative enhanced many of the images. In some cases, the enhancement consisted of sharpening the image. In others, some text was retyped, keeping the formatting of the original document intact. The table that follows identifies the enhanced images and, for each one, describes the enhancement.

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Unlike most law school texts, this book contains many images. Working closely with Alison Britton, Tom Collicott of 3Crown Creative enhanced and sharpened the great majority of those images. Tom and Alison created the cover design as well.

The book is filled with quotations. Kenneth Crews guided me with a skilled hand through the intellectual property issues created by my use of these passages. Sheila Colthorpe tirelessly kept a record of correspondence and permissions.

In that regard, I thank the many authors and publishers who gave me permission to reprint portions of their works. Credits to them appear where I quote their writings.

I thank as well those who supported my use of documents now in the public domain. I am particularly grateful for confirmation that I could use the examiner reports in the Enron, WorldCom, and Lehman bankruptcies,
and the reports of the special committees of the Enron and WorldCom boards.

Neither the help they gave me, nor their acknowledgment here or in credits to particular works, should suggest that those who assisted me or who provided permission to quote from their works agree with my prose or any implication that might be derived from it. And, of course, all errors are mine.
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