2008 TRENDS IN CORPORATE GOVERNANCE OF THE LARGEST US PUBLIC COMPANIES

GENERAL GOVERNANCE PRACTICES
In our sixth annual survey of selected corporate governance practices of the Top 100 Companies,* we highlight some of the trends and best practices that have emerged and evolved in the marketplace over the past year. The survey continues to track the Top 100 Companies and their boards’ responses to the revised NYSE listing standards, regulations promulgated by the Securities and Exchange Commission (SEC) pursuant to the Sarbanes-Oxley Act of 2002, and proposals submitted by shareholders and their representatives.

Since the implementation of the Sarbanes-Oxley Act, new standards for corporate governance practices have emerged for the Top 100 Companies covered by our survey. In fact, many of the new corporate governance dynamics that have emerged since 2002 are the direct and indirect result of requirements of the Sarbanes-Oxley Act. However, other trends, such as the growing predominance of majority voting standards in the election of directors, can be traced to the increasing shareholder activism that has characterized the post-Sarbanes-Oxley corporate landscape.

The overall results of this year’s survey show that the Top 100 Companies continue to improve corporate governance practices. In almost every category examined in this year’s survey, the number of Top 100 Companies adopting or implementing stricter corporate governance standards has increased. These increased standards have already had an effect on the number of corporate governance-related shareholder proposals the Top 100 Companies face now that these companies have adopted many of the practices advocated by shareholder activists in previous years. One of the more dramatic trends highlighted in this year’s survey is how rapidly companies have adopted a majority voting standard and implemented a related mandatory director resignation policy over the last three years.

* The Top 100 Companies consist of the 100 largest US public companies (as ranked in FORTUNE magazine’s FORTUNE 500® list, by revenue, for the most recently ended fiscal year) that have equity securities listed on the NYSE or Nasdaq.
SHAREHOLDER VOTING DYNAMICS

Majority Voting

Starting in 2003, in response to the failure of the proxy access initiative, shareholder activists began campaigning to have companies replace their plurality voting standards with a majority voting standard for uncontested director elections. These shareholder activists argued that the plurality voting standard did not provide shareholders with an effective means of voicing their discontent with director nominees in uncontested elections. In response, advocates of the plurality voting standard argued that plurality voting protected corporations and shareholders from the uncertainty of failed elections and vacancies on the board of directors and that the adoption of a majority voting standard left director elections vulnerable to manipulation by hedge funds and other shareholder activists with short-term objectives. However, many proponents of majority voting pointed to certain foreign jurisdictions, such as the United Kingdom, Germany and France, that have successfully operated under various majority voting regimes.

Some companies in the United States, such as Pfizer Inc., initially responded to the growing support for majority voting by retaining their plurality voting standard but supplementing it with a mandatory resignation policy, which required a director who did not receive a majority of the votes cast to tender his or her resignation. Soon after, other companies began to adopt pure majority voting standards or majority voting standards coupled with mandatory director resignation policies based on a model established by Intel Corporation.
By 2008, 71 of the Top 100 Companies had adopted a majority voting standard, compared to only 11 in 2006. Pressure from shareholders undoubtedly played an important role in this shift toward majority voting. In 2006, shareholders at 32 of the Top 100 Companies submitted proposals to adopt the majority voting standard, but shareholders at only three of the Top 100 Companies did so in 2008.

In most states, the “holdover doctrine” allows incumbent directors who do not receive a majority of the votes cast in an uncontested election to retain their seats on the board until a successor is elected even if a company has adopted a majority voting standard. The reasoning behind the holdover doctrine is to avoid failed elections or vacancies on the board.

Our survey has tracked the increasing acceptance of majority voting and mandatory director resignation policies by the Top 100 Companies. Pfizer’s recent adoption of an Intel-style modified majority voting standard is further evidence of this growing shift toward majority voting. As outlined in the chart below, companies can now be classified into four separate voting standard “quadrants” for uncontested director elections based on which voting standard they have adopted and whether they have implemented a mandatory resignation policy for directors receiving less than a majority of the votes cast.

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<th>NO MANDATORY RESIGNATION POLICY</th>
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<tr>
<td>PLURALITY VOTING STANDARD</td>
<td>Pure Plurality</td>
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<td>MAJORITY VOTING STANDARD</td>
<td>Pure Majority</td>
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Regardless of the goal behind the holdover doctrine, it has negated the benefits of majority voting to a certain degree with respect to incumbent directors in uncontested elections. A number of companies have addressed this problem by implementing mandatory resignation policies that require an incumbent director who does not receive a majority of the votes cast to tender his or her resignation. Other companies that have retained the plurality voting standard have also implemented a similar mandatory director resignation policy. In 2008, 76 of the Top 100 Companies had a mandatory resignation policy, compared with only 36 of the Top 100 Companies in 2006. Some companies, including 21 of the Top 100 Companies, now require incumbent directors and nominees to tender resignations prior to their nomination to the board.

Most state corporate statutes have a default plurality voting standard; however, some states and the American Bar Association have modified their corporate statutes to reflect the widespread introduction of majority voting. For example, the state of Washington recently amended the Washington Business Corporation Act (WBCA) to permit companies to expressly address the problem of “holdover” directors. The amendment creates a statutory mechanism by which incumbent directors who do not receive a majority of votes cast in an uncontested election will continue to serve until the earlier of: (a) a date specified in the company’s bylaws; (b) the date on which the company’s board selects a replacement for the incumbent director; or (c) 90 days after voting results are determined.
SHEARMAN & STERLING LLP

A standard would be unable to obtain the required majority of votes without these “automatic” broker votes. Depending on the number of shareholders who fail to provide their brokers with instructions on how to vote their shares, broker votes can have a deciding effect on certain proposals and obstruct the attempts of activist shareholders to bring about certain changes in companies, including “vote no” campaigns that urge the defeat of directors nominated by management through majority voting.

Due to these perceived problems, the NYSE has proposed an amendment to Rule 452 that would expressly exclude director elections from matters deemed to be “routine” for purposes of discretionary broker voting. This amendment would effectively limit brokers’ authority to vote shares for which they have not received any voting instructions. Despite the difficulties certain companies, particularly small- and medium-sized firms, may have in achieving a quorum at shareholders’ meetings without broker non-votes, shareholder activists have supported the NYSE’s proposed amendments to Rule 452 and the corresponding NYSE Listed Company Manual Section 402.08 because they hope that these reforms will lead to better corporate governance and more transparency in the director election process. The SEC, however, has not yet acted on the NYSE’s proposals.

Broker Non-Votes

Companies are required to send proxy materials to their shareholders of record, which are often the brokers of the beneficial owners of the shares. Brokers are then required to forward all proxy materials to beneficial owners. In order to ensure that large public companies achieve a quorum at their shareholders’ meetings, NYSE Rule 452 allows brokers who hold shares in “street name” on behalf of beneficial owners and who do not receive voting instructions from the shares’ beneficial owners at least ten days prior to a scheduled shareholders’ meeting to vote such shares in routine matters, including uncontested director elections.

Shareholder activists have focused their efforts on changing NYSE Rule 452 because brokers often use their discretionary voting powers to vote in favor of management proposals. Therefore, Rule 452 can have the effect of providing additional support for management proposals, including director elections. Some nominees at companies that have adopted a majority voting
ADDITIONAL COMMITTEES OF THE BOARD OF DIRECTORS

Boards of directors routinely establish committees to focus on certain fundamental aspects of their companies’ business and governance. The NYSE requires each listed company to have an audit, compensation and nominating/governance committee comprised entirely of independent directors; however, many of the Top 100 Companies have various other standing committees that focus on those areas of a company’s business and governance that its board of directors believes to be of particular importance.

The most common additional committees of the board are the executive and finance committees. Forty-six of the Top 100 Companies in 2008 had an executive committee, while 41 had a finance committee. Executive committees generally exercise the power of the board of directors between board meetings and implement the board’s policy decisions.

In recent years, shareholders, governments and non-governmental organizations have pressured companies to devote more of their resources to issues related to corporate social responsibility. Partly as a result of this pressure, 33 of the Top 100 Companies have established a public policy committee. The charters of public policy committees differ widely in their mandates because each company often tailors its public policy committee’s focus to its particular operations and circumstances. However, despite the varying scope of public policy committees, their existence underscores companies’ growing concern with the effects of their business on society at large.

In today’s ever-changing financial markets, companies, particularly large public corporations, often do not have the ability to wait for the next board of directors meeting before making crucial finance-related decisions. Therefore, boards often create finance committees to which they delegate the approval and oversight of a firm’s financing activities.
TECHNOLOGY AND CORPORATE GOVERNANCE

E-Proxies

The SEC has introduced two new rules defining how companies can deliver and provide access to their proxy materials. First, the SEC now permits companies to deliver their proxy materials via the notice-and-access model. Under the notice-and-access model, companies may furnish shareholders with their proxy materials via the Internet. Companies opting to use the notice-and-access model must provide shareholders with a mailed notice stating that proxy materials are available on the Internet and must allow shareholders to receive hard copies of the proxy materials at no charge. The SEC hopes that these reforms will reduce companies’ costs related to compliance with the proxy delivery requirements.

During the most recent proxy season, 18 of the Top 100 Companies used a hybrid notice-and-access method to deliver their proxy materials to shareholders in which they utilized the notice-and-access model for some shareholders and the traditional delivery method for others. Seventeen companies relied solely on the notice-and-access option, while 65 of the Top 100 Companies chose to retain the traditional delivery method. Many companies are probably waiting to determine the effects of using e-proxies before implementing an e-proxy system.

This cautious approach to e-proxies may prove to be justified, as some companies utilizing the notice-and-access model have reported large declines in the number of shareholders participating in the voting process. However, this decline in shareholder participation may be a temporary phenomenon as investors become more comfortable with the e-proxy process and its related technology in general.
Second, the SEC now requires larger issuers to post their proxy materials on a website and to notify shareholders of where to access these materials. Beginning January 1, 2009, all public companies and proxy soliciting persons who are not issuers will be required to provide their proxy materials online regardless of whether they choose to utilize the notice-and-access delivery method.

In addition to reducing the costs of compliance with proxy delivery requirements for public companies, the new e-proxy rules will reduce such costs for other parties as well. Shareholder activists may find that the new notice-and-access model will dramatically increase their ability to wage proxy contests through the elimination of one of the largest burdens to shareholder proxy contests—their prohibitive costs.

**Corporate Governance Disclosure on Company Websites**

The evolution of technology has had a dramatic impact on corporate governance practices, including those of the Top 100 Companies. Technology has allowed shareholders to monitor and become more involved in various aspects of the governance and everyday business of the companies in which they have invested. In particular, the Internet has provided shareholders with dramatically increased access to information regarding their companies, including governance documents and third-party analyses. In addition to being able to retrieve more company-related information with greater ease, shareholders have also been able to communicate with their companies and each other on an unprecedented level. This access to information and the increased channels of communication have allowed shareholders to exert greater influence than ever before.

The SEC’s EDGAR system has become a vital tool for many shareholders and third parties that want to access information relating to public companies. However, the SEC does not require companies to post all corporate governance-related documents on EDGAR, making the retrieval of certain information and documents challenging for those who are not familiar with EDGAR or securities laws. Therefore, companies’ websites have become vital portals for shareholders to access company information.

After accessing and analyzing corporate governance-related information for hundreds of companies over the last six years while compiling the data for our annual corporate governance surveys, we have recognized certain trends and practices among the Top 100 Companies relating to how they disclose such information and, in particular, the type of corporate governance documents they disclose to the public on their websites. Two questions arise with respect to this disclosure: (a) which information is provided on the websites and (b) how accessible is such information?

A hierarchy appears to exist among corporate governance documents with respect to the frequency with which companies choose to disclose them on corporate websites. This hierarchy does not necessarily correspond to the importance of the actual documents. A company’s most important corporate governance documents are its charter and bylaws; however, many companies often do not disclose either of these documents and others only disclose their bylaws.
Most companies provide access to their audit, compensation and nominating/governance committee charters and their corporate governance guidelines on their websites. After these core documents, company practice begins to diverge greatly as to the extent of access provided to their secondary governance documents, including the charters of committees other than the aforementioned committees, codes of ethics, director independence policies, voting standard policies and related person transaction policies. For example, some companies disclose the names and biographical information of their directors and/or senior officers while others do not.

Companies also vary in the frequency with which they update the corporate governance information on their websites. If the task of maintaining corporate governance information and documents on websites has been delegated to personnel who may not understand the significance of amendments to corporate governance information, these companies should take steps to make sure that amendments are uploaded onto company websites in a timely way and to ensure that the website reflects the most current corporate governance disclosure. In particular, we observed that changes in directors and executive officers or changes in their biographical information often were not reflected on company websites on a timely basis.

In addition to the level of corporate governance disclosure, the accessibility of such disclosure on websites varies widely among companies. The industry in which a company operates often affects the ability to access this information on the company’s website. For example, companies that operate websites with a high level of consumer traffic, such as retail companies, often have product focused websites.

The accessibility of corporate governance-related information starts with a company’s home page. While the link to corporate governance information is often simply entitled “Corporate Governance,” some companies include their corporate governance information under “Investor Relations.” Still...
other companies use links labeled “About the Company” or “The Company.” However, many of these links and the information available through them can only be accessed by first clicking on an unrelated link to a secondary page. In some cases, users must click on multiple links before a page appears with the company’s corporate governance information. Finally, for some companies, the link from their home page to the corporate governance-related information disclosed on their website does not function properly. These non-functioning links are particularly problematic as they could be a violation of certain provisions of Regulation S-K that require some companies to post specific corporate governance documents on their websites.

Since the enactment of the Sarbanes-Oxley Act, new standards and trends have emerged in the corporate governance practices of the Top 100 Companies that almost universally point to a dramatic shift in the number of companies utilizing enhanced corporate governance standards or policies. At the same time, our review of entirely new topics also highlights how the focus of companies and shareholder activists is constantly evolving as new issues and challenges emerge.
DIRECTOR INDEPENDENCE

Independence Policies

Both the NYSE and Nasdaq listing standards require that a majority of a listed company’s directors be independent. Of the Top 100 Companies, 52 have adopted and disclosed stricter standards regarding the minimum number of independent directors than required by the relevant listing standards.

Details of Other Supermajority Requirements

Companies that have stricter standards for minimum number of independent directors

- AT LEAST 75% INDEPENDENT DIRECTORS
- “SUBSTANTIAL” OR “SIGNIFICANT” MAJORITY OF INDEPENDENT DIRECTORS AND NO MORE THAN TWO FORMER OR PRESENT EMPLOYEE DIRECTORS
- MAJORITY OF INDEPENDENT DIRECTORS (WITH A GOAL OF SUBSTANTIAL OR SIGNIFICANT MAJORITY)

In addition, there was one company with each of the following requirements:
- Substantial majority of independent directors (with a goal of 2/3)
- Substantial majority of independent directors and no more than three non-independent directors
- Substantial majority of independent directors and no more than three employee directors
- Substantial number of independent directors
- Significant majority but, in most cases, should be all independent except CEO
- All independent directors except CEO
- All independent directors except CEO/Chair
- Majority of independent directors and at least ten independent directors
- At least 60% independent directors (with a goal of 75%)
- No more than two non-independent directors
- At least 70% independent directors
- “Preponderance” of independent directors
- Appropriate number of independent directors
Most of the Top 100 Companies do not explicitly require that 75% or more of their directors be independent. In practice, however, the Top 100 Companies continue to exceed their own requirements. Independent directors constitute 75% or more of the boards of 89 of the Top 100 Companies surveyed this year. The CEO is the only non-independent director at 44 of the Top 100 Companies. CFOs and COOs were members of the board at seven and nine of the Top 100 Companies, respectively.

Categorical Standards

The NYSE listing standards permit boards to adopt categorical standards to assist them in making independence determinations as long as those standards are disclosed in the company’s annual proxy statement. Notwithstanding the adoption of categorical standards, companies must make an affirmative determination regarding the independence of each of their directors. By making a general statement that the independent directors meet the categorical standards adopted by the board, companies need not detail the particular aspects of the immaterial relationships with individual directors if the relationships are covered by such standards. Of the Top 100 Companies, 78 have adopted categorical standards according to their most recent proxy statements.
Categorical Standards – Contributions to Non-Profit Organizations

Of the Top 100 Companies, 74 have adopted a categorical standard relating to a director’s affiliation with a non-profit organization that receives contributions from the listed company. The look-back period for such contributions, the nature of the director’s affiliation with the non-profit organization and the amount of such contributions (generally expressed as a dollar value or a percentage of the non-profit organization’s gross revenues or annual charitable receipts) are the three principal variations among the Top 100 Companies that have adopted such a categorical standard.
* Generally expressed as a percentage of the gross annual revenues or charitable receipts of the non-profit organization. The threshold is frequently expressed as the greater or lesser of a percentage and a fixed dollar amount which ranges from $50,000 to $5,000,000. Of the policies that reference a fixed dollar amount, the most common of such amounts is $1,000,000.
**Categorical Standards – Indebtedness**

Of the Top 100 Companies, 29 have adopted a categorical standard relating to a director’s affiliation with a company that is indebted to the listed company or to which the listed company is indebted. The look-back period for such indebtedness, the nature of the director’s affiliation with the other company and the amount of the debt (generally expressed as a percentage of the debtor company’s consolidated assets) are the three principal variations among the Top 100 Companies that have adopted such a categorical standard.

* For all but two of these companies, the equity holding is expressed as a percentage (ranging from 5% to 10%).
* For all but five of these companies, the amount of debt is expressed solely as a percentage of consolidated assets. Two companies use gross revenues, one company uses outstanding loans, another company uses gross revenues and consolidated assets, and the fifth company does not specify which basis it uses for calculating the amount of debt.
MAJORITY VOTING

VOTING STANDARDS IN UNCONTESTED DIRECTOR ELECTIONS

Seventy-one of the Top 100 Companies require directors to be elected by a majority of the votes cast. Sixty-one of those companies address the issue of holdover directors by requiring incumbent directors to submit their resignation from the board following their failure to receive a majority of the votes cast in favor of their election.

Twenty-nine of the Top 100 Companies surveyed this year continue to elect directors by a plurality of the votes cast. Fifteen of those companies have adopted a policy that nominees receiving more withheld votes than votes for their election must submit or tender their resignation from the board.
Twenty of the 76 companies that require directors to resign after failing to obtain a majority of the votes cast disclosed that they require nominees to submit their resignations prior to director elections. These resignations are typically conditional on the nominee failing to obtain a majority of the vote and the acceptance of the resignation by the board of directors or other responsible body.

Most of the 76 Top 100 Companies that have adopted a director resignation policy include this policy in their governance guidelines and require that the full board determine whether to accept the tendered resignation following the receipt of a recommendation from the nominating/governance committee.
Service on Other Public Company Boards

Of the Top 100 Companies, 92 address the issue of service by directors on other public company boards. Of those 92 Top 100 Companies, 55 place a limit on the number of public company boards on which a director may serve.

The boards of 15 of the Top 100 Companies include at least one director who serves on more than five public company boards.
Some of the Top 100 Companies consider other factors in their policies which stipulate limits on board service, such as whether a director is or is not the COO of the company in question.
**DIRECTOR QUALIFICATIONS**

**Retirement Age**

Although not required by either the NYSE or Nasdaq listing standards, 85 of the Top 100 Companies have disclosed a mandatory retirement age for their non-employee directors.* Of those 85 Top 100 Companies, 32 permit exceptions to the retirement age policy to be made by the board or a committee thereof. As has been the case in each of our previous surveys, 72 is the most commonly selected age for mandatory retirement.

* Only retirement ages for non-employee directors are reflected in this survey. Common practice requires employee directors (other than chairmen in certain instances) to retire from the board when they retire from employment with the company.

**Term Limits**

Of the Top 100 Companies, 70 address the topic of term limits, but only four of the Top 100 Companies have adopted mandatory term limits for their directors. Nearly all of the Top 100 Companies that explain their rationale for not adopting term limits cite the value of the insight and knowledge about the company’s operations and practices that directors who have served on the board for an extended period of time can provide.
Companies must disclose whether at least one member of the audit committee is an audit committee financial expert or, if not, why not. Although SEC rules require companies with an audit committee financial expert to disclose the identity of only one such expert, 62 of the Top 100 Companies voluntarily disclosed the identity of more than one audit committee financial expert in their most recent proxy statements. All audit committee members have been determined to be audit committee financial experts at 22 of the Top 100 Companies, up from 15 in 2005 and 17 in 2006.

**Service on Multiple Audit Committees**

The NYSE listing standards require that, if an audit committee member simultaneously serves on the audit committee of more than three public companies and the listed company does not limit the number of audit committees on which its audit committee members may serve, then the board must determine that such simultaneous service would not impair the ability of such member to serve effectively on the company’s audit committee and disclose such determination in its annual proxy statement. Of the Top 100 Companies surveyed in 2007, 66 limit the number of audit committees on which their audit committee members may serve.
BOARD LEADERSHIP

Separation of the Offices of CEO and Chairman of the Board

Separate people serve as CEO and chairman of the board at 28 of the Top 100 Companies, but of those companies only eight have adopted an explicit policy of splitting the two offices. The chairman is independent at 11 of the 28 companies with a separate chairman.

Policies on Separation of the Offices of CEO and Chairman

Seventy-seven of the Top 100 Companies address the topic of whether the two offices should be separated. Of those 77 Top 100 Companies, only 21 specifically state that the offices of CEO and chairman of the board should not be separated.
Selection of Presiding Directors for Executive Sessions

The NYSE listing standards require that the name, or the method of selection, of the director presiding over executive sessions of non-management directors be disclosed in a company’s annual proxy statement. Since the implementation of this requirement, the Top 100 Companies have adopted a wide variety of methods for selecting their presiding directors, and no standard approach has developed.

* A non-management director serves as secretary.
** Six of these companies provide that if the chairman of the board is not independent, then a presiding/lead director is chosen in another manner.
**BOARD LEADERSHIP**

**Duties of Presiding/Lead Independent Directors**

Of the Top 100 Companies, 69 have given their lead or presiding director responsibilities in addition to setting the agenda for, and presiding over, executive sessions. The principal responsibilities given to presiding directors at these companies are detailed below.
Frequency of Executive Sessions

The NYSE listing standards require that the non-management directors of each company meet at regularly scheduled executive sessions outside the presence of management. Some companies have set a minimum number of executive sessions. Eight of the Top 100 Companies include an executive session of non-management directors as part of every board meeting, and 25 of the Top 100 Companies include an executive session of non-management directors as part of every regularly scheduled board meeting.
POISON PILLS

Of the Top 100 Companies, 12 have a shareholder rights plan or “poison pill.”

In an attempt to circumvent poison pills, hedge funds and other shareholder activists have devised various methods of using complex derivatives and other synthetic arrangements to increase their economic exposure to firms, while simultaneously limiting their voting rights in such firms. Accordingly, the functioning of poison pills, including, in particular, the method used for determining a shareholder’s level of beneficial ownership, should be reexamined.
Of the Top 100 Companies, 27 have a classified or staggered board of directors.

Since 2004, the decrease in the number of Top 100 Companies with classified boards has led to a corresponding decrease in the number of shareholder proposals advocating for the annual election of directors (see page 42), as activists and shareholder proposal proponents have turned their attention to majority voting and, most recently, shareholder proposals relating to executive compensation (see our comparison survey regarding director and executive compensation).
**Number of Board Meetings***

Over the past few years, the number of board meetings has generally increased. During 2007, 65 of the Top 100 Companies surveyed held eight or more meetings.

* For purposes of these findings, for companies that do not have a calendar fiscal year, the most recent publicly available information is reflected.

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**Minimum Number of Board Meetings**

Of the Top 100 Companies, 48 set a minimum number of board meetings each year. In 2008, the minimum number of meetings ranges from four to eight.
**Number of Audit Committee Meetings**

During 2007, 82 of the Top 100 Companies held eight or more audit committee meetings.

* For purposes of these findings, for companies that do not have a calendar fiscal year, the most recent publicly available information is reflected.

**Minimum Number of Audit Committee Meetings**

Of the Top 100 Companies, 91 require a minimum number of audit committee meetings each year. The minimum number of meetings ranges from four to nine.
**BOARD AND COMMITTEE MEETINGS**

**Number of Nominating/Governance Committee Meetings**

During 2007, 81 of the Top 100 Companies held four or more nominating/governance committee meetings.

* For purposes of these findings, for companies that do not have a calendar fiscal year, the most recent publicly available information is reflected.

**Minimum Number of Nominating/Governance Committee Meetings**

Of the Top 100 Companies, 60 require a minimum number of nominating/governance committee meetings each year. The minimum number of meetings ranges from one to four.
**Number of Compensation Committee Meetings**

During 2007, 96 of the Top 100 Companies held four or more compensation committee meetings.

* For purposes of these findings, for companies that do not have a calendar fiscal year, the most recent publicly available information is reflected.

**Minimum Number of Compensation Committee Meetings**

Of the Top 100 Companies, 64 require a minimum number of compensation committee meetings each year. The minimum number of meetings ranges from one to eight.
RELATED PERSON TRANSACTIONS

Specific Transactions

Of the Top 100 Companies, 70 disclosed transactions in which the company was a participant and in which a related person had a direct or indirect material interest.
RELATED PERSON TRANSACTIONS

Policies

Public companies must disclose a summary of their policies and procedures for the review, approval or ratification of related person transactions. The Nominating/Governance Committee at 51 of the Top 100 Companies is responsible for the approval of related person transactions. Many of the Top 100 Companies utilize various information collection and review procedures involving a wide array of departments, employees and committees to analyze transactions before they are presented to the entity ultimately responsible for approving the transaction.

* Thirteen companies each had one of the following entities responsible for the approval of related person transactions.
  » Compensation committee for immediate family members and audit committee for all other related persons
  » Compensation committee for officers and Nominating/Governance Committee for directors and >5% shareholders
  » Audit committee for officers and board of directors for directors
  » CEO/general counsel for officers and Nominating/Governance Committee for directors, general counsel, CEO and >5% shareholders
  » Nominating/Governance Committee for directors and CEO, and CEO for officers
  » Nominating/Governance Committee for officers and >5% shareholders, and Nominating/Governance Committee and board of directors for directors
  » Nominating/Governance Committee for directors, CEO for officers and audit committee for CEO and >5% shareholders
  » Board of directors/independent committee
  » Independent directors
  » Conflicts of interest committee
  » General auditor/director of compliance
  » Office of ethics and business practices
  » Not disclosed
TRANSACTION NO LESS FAVORABLE THAN A TRANSACTION ON AN ARM’S LENGTH BASIS WITH AN UNAFFILIATED THIRD PARTY
EXTENT OF RELATED PERSON’S INTEREST IN THE TRANSACTION
WHETHER TRANSACTION WOULD IMPAIR RELATED PERSON’S INDEPENDENCE
WHETHER TRANSACTION WOULD CREATE AN ACTUAL OR APPARENT CONFLICT OF INTEREST
PURPOSE/BUSINESS REASONS FOR TRANSACTION
BENEFITS OF THE TRANSACTION TO THE COMPANY
EXTENT OF THE COMPANY’S INTEREST IN THE TRANSACTION
AVAILABILITY/COSTS OF ALTERNATIVE TRANSACTIONS

ORDINARY COURSE COMPENSATION FOR OFFICERS
ORDINARY COURSE COMPENSATION FOR DIRECTORS
RELATED PERSON’S INTEREST IN TRANSACTION ARISES SOLELY BECAUSE IT IS A SHAREHOLDER OF THE COMPANY AND ALL SHAREHOLDERS RECEIVED THE SAME BENEFIT ON A PRO RATA BASIS
TRANSACTIONS RESULTING FROM A COMPETITIVE BIDDING PROCESS
ORDINARY COURSE BANKING/FINANCIAL SERVICES TRANSACTIONS
TRANSACTIONS IN WHICH RELATED PERSON WAS AN EMPLOYEE OF THE OTHER PARTY AND THE VALUE OF THE TRANSACTION WAS LESS THAN $1 MILLION OR 2% OF THE OTHER PARTY’S GROSS REVENUES
TRANSACTIONS IN WHICH RATES WERE FIXED BY LAW
TRANSACTIONS IN WHICH RELATED PERSON OWNED LESS THAN 10% OF THE OTHER PARTY AND THE VALUE OF THE TRANSACTION WAS LESS THAN $1 MILLION OR 2% OF THE OTHER PARTY’S GROSS REVENUES
TRANSACTIONS IN WHICH RELATED PERSON’S SOLE INTEREST IN THE TRANSACTION WAS AS A DIRECTOR OF THE OTHER PARTY
TRANSACTIONS WITH NON-PROFITS IN WHICH THE RELATED PERSON IS ASSOCIATED WITH THE NON-PROFIT AND THE VALUE OF THE TRANSACTION WAS LESS THAN $1 MILLION OR 2% OF THE NON-PROFIT’S GROSS REVENUES
Beginning in 2007, companies were permitted to provide some or all of their proxy materials through the new “notice-and-access model.” Seventeen of the Top 100 Companies opted to utilize a pure notice-and-access model for all of their shareholders, while 18 of the Top 100 Companies adopted a hybrid approach in which they used the notice-and-access model for certain shareholders and the traditional approach for other shareholders.
In addition to the audit, compensation and nominating/governance committees, many companies have established additional committees of the board of directors. Of the Top 100 Companies, 88 have additional committees.

The most common additional committees among the Top 100 Companies are executive, finance and public policy committees.
The following corporate governance-related shareholder proposals were most frequently included in the 2003, 2004, 2005, 2006, 2007 and 2008 proxy statements of the Top 100 Companies.

**INDEPENDENT BOARD CHAIRMAN:** Requests that the board adopt a policy requiring its chairman to be an independent director and not the current or former CEO or employee.

**TWO NOMINEES FOR EACH DIRECTOR POSITION:** Requests that the board be required to nominate two candidates for each board seat.

**CUMULATIVE VOTING FOR DIRECTORS:** Requests that the board take steps to provide for cumulative voting for directors by granting each shareholder a number of votes equal to the number of shares owned by such shareholder multiplied by the number of directors to be elected and the right to cast all votes for a single candidate.

**ANNUAL ELECTION OF DIRECTORS:** Requests that the board amend the company’s governance documents to require each director to be elected or re-elected annually.
REDEMPTION OF, OR SHAREHOLDER VOTE ON, POISON PILL:
Requests that the board submit the adoption, amendment or repeal of any poison pill to a shareholder vote or that the bylaws or charter be amended to require shareholder vote on poison pill.

DIRECTOR ELECTIONS BY MAJORITY VOTE:
Requests that the board amend the company’s governance documents to provide that nominees standing for election must receive the affirmative vote of a majority of the votes cast.

REMOVAL OF SUPERMAJORITY REQUIREMENT:
Requests that the board eliminate all supermajority voting standards, unless required by law, and adopt a simple majority voting standard.

ONE VOTE PER SHARE:
Requests that the board recapitalize the company so that all shares are entitled to only one vote.
For the purposes of this survey, the corporate governance practices of the 100 largest US public companies (as ranked in FORTUNE magazine’s FORTUNE 500© list, by revenue, for the most recently ended fiscal year) that have equity securities listed on the NYSE or Nasdaq were reviewed. The most recently available annual proxy statements and corporate governance information on the companies’ websites available as of June 1, 2008 were reviewed for the companies listed on this page.

Federal Home Loan Mortgage Corp. and Federal National Mortgage Association are governed by congressional charters and therefore have not been included in this survey. The practices of non-public companies, including State Farm Mutual Automobile Insurance Company, New York Life Insurance Company, Teachers Insurance and Annuity Association-College Retirement Equities Fund, Massachusetts Mutual Life Insurance Company, Liberty Mutual Insurance, Publix Super Markets, Inc., GMC Commercial Holding Capital Corp., HCA Inc. and Northwestern Mutual Life Insurance Co. were not examined.

The practices of Delphi Corporation, Countrywide Financial Corporation and Enterprise GP Holdings L.P. were also not examined. Delphi Corporation is in bankruptcy and did not file its proxy statement as of June 1, 2008. Countrywide Financial Corporation is in the middle of a merger and did not file its proxy statement as of June 1, 2008. Enterprise GP Holdings L.P. is a limited partnership with no board of directors and no requirement to hold annual meetings.

This survey and our companion survey regarding director and executive compensation are available on the Shearman & Sterling LLP website at www.shearman.com/corporategovernance

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2008 Trends in Corporate Governance of the Largest US Public Companies

General Governance Practices