

September 30, 2010

The **New York Stock Exchange** released a report recently on corporate governance that is worth calling to your attention if it hasn't crossed your desk already. It is a level-headed, responsible and balanced discussion that reminds us that corporate governance is a matter of protecting and promoting the corporation's interests.

The report was prepared by a special **Commission on Corporate Governance** convened by the NYSE in 2009 in response to the financial crisis of 2008 and the subsequent focus on new regulations and rulemaking. Members include corporate representatives (IBM, GE, and Xerox, for example); investors and advocates (CalPERS and Vanguard, among others); and representatives of the broader legal community. A full list of Commission members is available by clicking [here](#).

The Commission's objective was to inform the debate on governance by defining core principles of good governance that all market participants can accept and support. The resulting 10 principles are listed on the following page, and the full report is available by clicking [here](#).

Many of these "reminders" resonate with us at Semler Brossy. Our key takeaways:

- **Effective governance involves collaboration between the board and management.**

The report notes that many companies have taken the need for independence too far, eliminating management participation on the board, except for the CEO.

- **Governance only works if it supports the objective of improving sustainability, profitability, and creation of value for shareholders.**

The Commission calls on the SEC and NYSE to periodically evaluate how major governance reforms are impacting corporate success and to make changes where warranted.

- **Good Governance is not a matter of only "checking the box."**

The report notes that governance should be part of a company's business strategy, not just a list of activities. It also notes that the increasing focus on compliance reduces the time that directors can spend focused on their other responsibilities.

It is uncertain if the NYSE will issue any rule recommendations to the SEC as a result of the report, although this has happened with prior NYSE commissions.

The 10 principles are listed on the next page. Please let us know if you have any questions.

NYSE COMMISSION ON CORPORATE GOVERNANCE: CORE PRINCIPLES

Principle 1 The board's fundamental objective should be to build long-term sustainable growth in shareholder value for the corporation, and the board is accountable to shareholders for its performance in achieving this objective.

Principle 2 While the board's responsibility for corporate governance has long been established, the critical role of management in establishing proper corporate governance has not been sufficiently recognized. The Commission believes that a key aspect of successful governance depends upon successful management of the company, as management has primary responsibility for creating an environment in which a culture of performance with integrity can flourish.

Principle 3 Shareholders have the right, a responsibility and a long-term economic interest to vote their shares in a thoughtful manner, in recognition of the fact that voting decisions influence director behavior, corporate governance and conduct, and that voting decisions are one of the primary means of communicating with companies on issues of concern.

Principle 4 Good corporate governance should be integrated with the company's business strategy and objectives and should not be viewed simply as a compliance obligation separate from the company's long-term business prospects.

Principle 5 Legislation and agency rulemaking are important to establish the basic tenets of corporate governance and ensure the efficiency of our markets. Beyond these fundamental principles, however, the Commission has a preference for market-based governance solutions whenever possible.

Principle 6 Good corporate governance includes transparency for corporations and investors, sound disclosure policies and communication beyond disclosure through dialogue and engagement as necessary and appropriate.

Principle 7 While independence and objectivity are necessary attributes of board members, companies must also strike the right balance between the appointment of independent and non-independent directors to ensure that there is an appropriate range and mix of expertise, diversity and knowledge on the board.

Principle 8 The Commission recognizes the influence that proxy advisory firms have on the market, and believes that such firms should be held to appropriate standards of transparency and accountability. The Commission commends the SEC for its issuance of the Concept Release on the U.S. Proxy System, which includes inviting comments on how such firms should be regulated.

Principle 9 The SEC should work with the NYSE and other exchanges to ease the burden of proxy voting and communication while encouraging greater participation by individual investors in the proxy voting process. The SEC should work with all parties to the proxy system to ensure that companies and investors are able to communicate about proxy voting issues on a timely basis without undue costs or burdens, recognizing that there are privacy and other concerns from investors regarding the proprietary nature of their investment strategies.

Principle 10 The SEC and/or the NYSE should consider a wide range of views to determine the impact of major corporate governance reforms on corporate performance over the last decade. The SEC and/or the NYSE should also periodically assess the impact of major corporate governance reforms on the promotion of sustainable, long-term corporate growth and sustained profitability.