

Ranking Member Spencer Bachus (AL) Opening Statement at the Hearing on "Empowering Shareholders on Executive Compensation"

March 8, 2007

Good morning and thank you, Chairman Frank, for calling this hearing today to review executive compensation.

As we begin this hearing, I want to express my willingness to keep an open mind concerning this issue. Like many of my constituents, I am troubled by news media reports of enormous compensation packages for corporate executives, especially when they seem to reward incompetence. Nonetheless, I approach this subject with abundant caution. Our system of corporate governance has evolved over decades, even centuries and we should make changes with great care. The admonition to "first, do no harm" should guide us. We should also remember the law of unintended consequences and seek as much advice as possible before changing a system that has served us well.

Lavish executive compensation packages for CEOs have contributed to the growing public perception — justified or not — that the rules in corporate America are rigged in favor of well-insulated insiders, often aided and abetted by boards of directors that have failed in their fiduciary obligations to shareholders. While I believe our overall system of corporate governance is sound, it is difficult to understand how some boards could have approved extravagant payments to executives who clearly failed to lead their companies successfully and deliver shareholder value. In fact, some recent examples seem to show outrageous rewards for rank incompetence.

While I firmly believe executive compensation should reflect performance, I believe we should consider whether it is the proper role of Congress to substitute our judgment for that of the owners expressed through their representatives on corporate boards of directors. I also question whether very large compensation packages are wrong if the executive clearly contributes to great success and substantial rewards for the stockholders. What was appropriate compensation for Jack Welch? Warren Buffett? Bill Gates? Is it misguided to reward exceptional vision, management skill and leadership with extraordinary compensation?

The bill the Chairman has introduced makes my decisions on this issue more difficult than some previous proposals that have taken a more prescriptive approach. It is crafted to require only an advisory expression by stockholders and not a vote that would bind the corporation or set compensation levels. The proposition that stockholders should have an opportunity to express their approval, or more importantly, disapproval of executive pay proposed by the board of directors is at first blush, a reasonable one.

Government intervention should be questioned in part because the system seems to be self-correcting even as we take up this issue. Indeed, at least one major U.S. corporation, AFLAC, has already adopted this practice voluntarily, and I understand a number of others have it under consideration. If this is the direction stockholders want corporate management to take, they will reward those companies who adopt this practice and discountenance those who do not.

In other words, stockholders will exercise the right they already have and vote with their investment dollars.

The contributions of our regulatory community should also be acknowledged as we examine this issue. One example of constructive regulatory intervention is Chairman Cox's recent initiative at the SEC to require proxy statements to include comprehensive summaries of executive compensation, presented in a scorecard format that is easy for shareholders to understand. Whether we need to go beyond this robust, newly-adopted disclosure regime remains to be seen.

Transparency is one of the elements that I believe is essential to good corporate governance. The new SEC regulations seek to provide this. It should be recognized, however, that governmental actions often do have unintended consequences. Previous attempts to require companies to divulge executive compensation resulted in annual statement disclosures that compared a company's CEO pay to that of others at similar companies. Most companies try to place their CEO at the mid-point, or if they think their CEO is doing a good job, a little above the average on this scale. The result has been a perpetual pay escalator with each company moving its pay higher as each round of annual reports is issued.

This should engender caution as we address an equally well-intentioned proposal in this bill that could have outcomes we do not now contemplate.

What we do not want to do is to intervene in this issue in a way that creates additional problems. If the pendulum swings too far in the other direction, and publicly traded companies face artificial impediments to rewarding top executive talent, we could witness an exodus of qualified corporate officers to far more lucrative positions at hedge funds and private equity firms. I am always concerned about the effect of this kind of change on our global competitiveness.

Mr. Chairman, the great Scottish philosopher Adam Smith is known more for his concept of the "invisible hand" than his views on ethics. However, he believed that the concepts of fairness, trust, and reciprocity played essential roles in the functioning of the free market.

For the free enterprise system to work, shareholders need to have confidence that the businesses they invest in will engage in ethical, above-board behavior. Similarly, for the corporate system to work, shareholders must have confidence that corporate managers and boards of directors are acting in an ethical, above-board manner as well.

I look forward to the testimony of the witnesses. As the hearing proceeds, I will be listening carefully to the arguments for and against the legislation. Frankly, these presentations will help me make up my mind on this issue. I believe it is vitally important that we get this right.

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