TWENTY AREAS OF CORPORATE LAW REFORM WHICH NEED TO BE ADDRESSED

SUBMISSION ON CLERP 9 PROPOSALS BY SHAREHOLDER ACTIVIST STEPHEN MAYNE

Stephen Mayne is Australia's best known shareholder activist who has failed on 18 occasions to be elected major public company boards. Stephen spent 10 years as a business journalist working for a range of papers including The Herald Sun, The Age, The Daily Telegraph and The Australian Financial Review. In February 2000 he founded www.crikey.com.au which has become Australia's best known independent ezine with 4800 paying subscribers and 600,000 page views a month.

What follows are 20 areas of corporate governance reform that Stephen feels need to be address through the CLERP reform process after attending more than 200 AGMs and following the Australian corporate sector for closely for 15 years.

100 shareholder rule and AGMs

The requirement to get 100 signatures from shareholders to get a resolution on the notice paper at an annual general meeting is too difficult. In America you only need $US2000 worth of shares. For example, the Exxon-Mobil AGM in Dallas last May had no less than 12 shareholder resolutions. Before this year's Boral AGM, we hadn't had 12 shareholder resolutions over the past 15 years in Australia. In other words, public company boards have for too long had an effective monopoly over the resolutions up for debate at AGMs. If we want a culture of shareholder pressure in Australia we need to make it easier for shareholders to put resolutions to the vote.

100 shareholder rule and EGMs

Whilst 100 signatures it too onerous for AGM shareholder resolutions, 100 shareholders is too easy for the calling of an extraordinary general meeting which should only be a last resort option because of the additional cost it imposes on the company. Crikey would support changes that required 5 per cent of the capital for an EGM provided it was made easier to get resolutions up at AGMs.

Related party transactions

All related party transactions must be disclosed. You can't have Rick Allert sitting on the board of Southcorp and Coles Myer and the $100 million-plus in dealings not being disclosed because they argue being a director is not "a financial interest". Similarly, some of Solomon Lew's dealings with Coles Myer were also excluded through this technicality. Another example is Southern Cross Broadcasting not disclosing its dealings with the law firm Corrs Chambers Westgarth when its chairman John Dahlsen is a consultant to Corrs and has an office there.

Disclosure of institutional voting

The Americans are moving to full public disclosure of institutional voting from January 1 next year and we should do the same to get some more accountability. This is particularly important because invisible institutions keep returning dud directors with 99% yes votes and we need to know who is doing this for better institutional accountability.

Proxy voting for board election

With corporate elections, shareholders should have to tick a box which says "the chairman" if they want to hand over their proxy vote. It is unfair to have this as the default mechanism. I was almost elected to the Woolworths board in 2000 but the "open proxies" held by the chairman were enough to get my vote down from 58 per cent to 45 per cent. Similarly, boards should not be able to unilaterally declare there is no vacancy for an outsider if the total number is within the upper limit specified in the company's constitution.

Vote counting rules

The Corporations Law should specify what information on proxy voting is permitted to flow between a company and the board. For instance, as an outside candidate I'm never been provided with any running tallies but the boards sometimes get these. Similarly, there should be provisions guaranteeing access to the share register and to scrutineer board votes.

Board nomination rules

The reason Stephen Mayne runs for so many boards is that most companies only require one shareholder signature to nominate. I would prefer to simply propose resolutions but getting 100 shareholders to sign for a resolution is too difficult. However, some companies put up nomination barriers by requiring a minimum shareholding (ie AMP and AGL require 2000 shares) or a specified number of shareholder signatures to nominate (Optus 50, Qantas 100, AMP 25). It would be preferable if this was specified in the Corporations Law but I would be happy if nominating for a board required a small number of signatures such as 6-10.

Disclosure of options

Better disclosure of options for senior management as few companies reveal the terms of earlier option issues when asking for an additional allocation to their CEO. An upcoming example is Westpac where CEO David Morgan is already about $20 million in front on his existing options but shareholders are not being told this as they prepare to vote on another large allocation.

Director retirement schemes

Payments to non-executive director should be limited to one shareholder resolution covering all payments rather than the current system where shareholders approve a maximum annual cash payment and a separate lump sum retirement payout. The retirement scheme and accrued benefits should be explained in full in every annual report. Just disclosing the annual accrued retirement benefit for that year is not enough as shareholders should be told each year what the trigger points (ie 10 years, 15 years) for increased payouts are when assessing whether to re-elect a director.

Disclosure of director dealings

Directors should be compelled to disclose all derivative dealings in the company's stock. At the moment people like Macquarie chairman David Clarke and Woolworths CEO Roger Corbett have only disclosed their so-called "cap and collar" options deals voluntarily.

ASX structure

The ASX should come under formal price monitoring by the ACCC as it is a government-mandated monopoly providing shareholders with unmatched returns in the Australian market. The regulatory aspects of the ASX should be returned to a not-for-profit structure.

ASIC fines

ASIC fines for disclosure breaches should be increased to up to $1 million and directors who fail to reveal their dealings should face forfeiture of the proceeds. Who can forget the way One.Tel's New York-based director Steven Gilbert sold $90 million worth of shares without telling the market?

Shareholder vote disclosure

Companies should reveal the number of shareholders which vote for and against resolutions as well the total amount of shares voted. This would make public the substantial number of resolutions each year which are passed by institutional investors when a majority of voting shareholders have actually opposed it. The best example of this is the BHP-Billiton merger which was substantially opposed by smaller shareholders. Given schemes of arrangement require approval from a majority of shareholders who vote, surely it would make sense to extend disclosure of this across other corporate votes.

Audit independence

The proposed changes are worthwhile. The worst example we've seen of auditors joining management is Christopher Lewis who went from KPMG's audit signing partner on National Australia Bank to global head of risk management at NAB. Problem was the that he totally missed the Homeside losses in the 2000 accounts head which didn't even mention the MSR risk was at the heart of the $3 billion-plus loss.