A Welcome Regulatory Shake-Up for Public Companies?

Commentary #6

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To say that the regulatory burden borne by public companies is heavy and costly is to state the obvious. Yet major changes are now challenging what, until very recently, was taken for granted, prompting us to reflect seriously on the burden of regulatory compliance and on what should be the true centre of gravity of corporate governance: the board of directors.

Since the Sarbanes-Oxley Act was enacted in 2002 in response to the financial scandals of the time—notably Enron and WorldCom—the governance framework and accountability requirements have tightened considerably. The 2008 financial crisis subsequently led the Obama administration to adopt the Dodd-Frank Act in 2010, further strengthening this framework by requiring public companies to hold advisory votes on executive compensation, commonly referred to as "say-on-pay," while also introducing numerous disclosure requirements aimed at increasing transparency. The excesses, abuses and resulting consequences called for an appropriate response, and these laws sought to provide one.

The first two decades of the 21st century were therefore marked by sweeping governance reforms, but also by a shift in power away from boards of directors—subtle at first, then decidedly overt by the end of the 2010s—toward a new form of shareholder control over the policies and direction of public companies.

With voting power increasingly concentrated in the hands of institutional investors, particularly amid the tremendous growth in exchange-traded funds (ETFs) and the considerable influence wielded by proxy advisory firms, the pendulum swung to a new extreme. This gave rise to shareholder proposals on an increasingly wide range of issues, some of them frivolous, demanding that boards devote attention to matters far removed from the company's day-to-day business and strategic priorities.

A few weeks after President Trump's inauguration in 2025, the U.S. Securities and Exchange Commission (SEC) announced a series of regulatory changes. First, companies were allowed to reject shareholder proposals that failed to meet an economic materiality threshold. These changes also made it more difficult for institutional shareholders to engage with issuers. The objective was to reduce the information asymmetry that could exist among different classes of shareholders and rebalance power by returning more of it to the directors elected by shareholders to represent them.

In June 2025, during a roundtable on executive compensation, Paul Atkins—the SEC Chair appointed by President Trump—described the regulator's disclosure requirements as "a Frankenstein patchwork of rules" whose volume and complexity were "just as scary" as the monster itself. He then announced his intention to move quickly with reforms aimed at reining in this monstrosity. In the months following that speech, Texas, followed by about 10 other states, adopted legislation aimed at restricting shareholders' ability to use their votes to impose policies based on considerations other than purely economic criteria.

In other words, environmental, social and governance (ESG) factors would no longer serve as a basis for voting decisions.

A presidential executive order signed last December further bolstered these efforts, while also targeting proxy advisory firms. The Texas law is currently being challenged in court, temporarily preventing its full implementation, but the movement is now underway nationwide.

In a high-profile speech delivered at the opening of a New York Stock Exchange trading session, Atkins pointed out that more than 7,000 companies were listed on U.S. exchanges in the mid-1990s, and that the number has since fallen by approximately 40%. Attributing this decline to regulatory overreach, he unveiled on May 19 the reform proposal he had announced a year earlier.

Under the proposal, nearly 81% of companies currently listed in the United States would qualify for significant regulatory relief, including the following: elimination of mandatory say-on-pay and golden-parachute votes; a complete exemption from pay-versus-performance disclosure; the elimination of various disclosure tables relating to stock options and other components of compensation; a reduction in the comparison period from three years to two; and a reduction in the number of named executive officers whose compensation must be disclosed, from five to three.

At the time of writing, the SEC was continuing its consultations with a view to finalizing this ambitious reform, which is expected to be in effect for the next proxy season.

Meanwhile, in Canada, the Canadian Securities Administrators released a proposal on July 16 that, in several respects, echoes—albeit more cautiously—the efforts underway in the United States. Notably, it would allow a broader range of issuers to report financial information semi-annually rather than quarterly.

Between 2020 and 2025, some 30 operating companies (excluding ETFs and other financial vehicles) went public on the TSX through IPOs, while more than 250 companies went private over the same period. Action is imperative—and it must come quickly.

A reduction in the regulatory burden and the associated costly disclosure requirements is therefore necessary. By way of example, for Canada's largest companies, the compensation disclosure section alone averaged 6 pages in 2000, compared with more than 40 pages today.

The pendulum must also begin to swing back toward boards of directors. As with any pendulum, however, the challenge will be to ensure that it does not swing too far in the other direction.

Although largely overshadowed by the major economic and geopolitical issues dominating the news, these reforms nonetheless mark an important shift, paving the way for a new era.

An era whose time has come.

Notes :

The opinions expressed in this article are solely those of the author.

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