

Executive Summary

The corporate crime wave that came to light in 2002 cost investors dearly, with some \$7 trillion in market value vanishing almost overnight.¹ The series of scandals that spurred this economic meltdown – Enron, Global Crossing, Adelphia, Tyco, Worldcom and others – exposed the stunning, systemic failure of corporate directors to police crooked CEOs or protect the interests of shareholders.

In response, President Bush had strong words for dishonest CEOs and other corporate malefactors. “We’ve got thousands of citizens who own shares of publicly held companies, many in pension plans, mutual funds, a lot of them direct ownership,” Bush said in a March 2002 speech on corporate responsibility. “And this country must hold CEOs – CEOs of publicly held companies, to the highest of high standards.”²

The job of setting those high standards fell to the Securities and Exchange Commission (SEC), the quasi-independent federal agency charged with protecting investors and maintaining the integrity of U.S. securities markets. In October 2003, the SEC proposed the so-called shareholder access rule, a modest reform measure that would make it easier for concerned investors to place their own nominees on a company’s board of directors. Currently, there is no practical way for shareholders to hold even failing corporate boards responsible.

Though the proposed regulation had the support of institutional investors, state treasurers, unions, corporate governance experts, and even SEC Chairman William Donaldson, the shareholder access rule was vehemently opposed by the CEOs of some of America’s largest corporations. A year after first being introduced, the rule still has not seen the light of day.

That’s largely because the Bush administration has sided with the CEOs against the shareholders. Apparently in deference to some of its biggest financial backers and corporate cronies, the Bush administration has worked to delay and debilitate a rule that would hold CEOs accountable to their shareholders. This is a classic case of money and access winning out over what is in the best interest of average citizens.

The Bush Administration, the Business Roundtable, and the U.S. Chamber of Commerce pressured the SEC to back down on the shareholder access rule.

- The Business Roundtable, a powerful association of 157 CEOs from the country’s biggest corporations, lobbied the SEC against the shareholder access rule. Roundtable President John Castellani, then-Executive Director Patricia Engman, and at least eight executives from Roundtable member companies have lobbied SEC officials on the rule. Roundtable representatives met three times with SEC Chairman Donaldson and four times with two other SEC commissioners or staff after the rule was proposed.
- The Roundtable also pressured the White House, Treasury Department, Commerce Department and Congress to stop the shareholder access rule. Federal lobbying disclosure forms show that the Roundtable spent more than \$12.8 million lobbying the federal

government on the rule and other issues in 2003 and the first half of 2004, the most recent data available. The forms do not itemize how much was spent on each issue, but they do show that Castellani and Engman personally lobbied the Executive Office of the President on the rule. Five weeks after the shareholder access rule was proposed by the SEC, the Roundtable also tried to enlist the Office of Management and Budget in stopping the rule.

- The Bush administration dispatched Treasury Secretary John Snow – a former chairman of the Business Roundtable – to pressure SEC officials to weaken the shareholder access rule. According to one senior commission official, Snow served as the White House point man in making sure “the views of an administration eager to court the chief executives during an election year have been made clear to the chairman.” Multiple SEC officials told four separate reporters that Snow let it be known that the White House does not want the rule to proceed.
- Under pressure from the Bush administration, the Roundtable and the U.S. Chamber of Commerce – which threatened to sue if the measure were implemented – Donaldson has delayed and proposed weakening the rule. After vowing in May to pass the rule even if it meant splitting the commission, by June Donaldson gave the first indications that he was backing off. An SEC official, speaking on the condition of anonymity, explained to a *Wall Street Journal* reporter that Donaldson “wants a compromise and he wants some access to be accomplished.”
- Donaldson’s delays in moving forward on the shareholder access rule infuriated Democratic SEC Commissioner Harvey J. Goldschmid, who declared in an October speech: “The commission’s inaction to this point has made it a safer world for a small minority of lazy, inefficient, grossly overpaid and wrongheaded CEOs. So far, in my view, the worst instincts of the CEO community have triumphed.”
- Departing from his earlier position that he would move forward without a unanimous vote, Donaldson now has said the SEC will not issue a final rule until it reaches “meaningful consensus” and that any further action is unlikely before Election Day – if at all.

The corporations opposed to the shareholder access rule include some of Bush’s biggest financial backers.

- Public Citizen focused on 205 corporations opposed to the shareholder access rule – a group that consists of publicly traded, U.S.-based members of the Roundtable and the Chamber board as well as 43 unaffiliated corporations that filed comments against the rule. All told, these companies and their employees contributed \$55.5 million to Bush’s campaigns, the Bush-Cheney Inaugural Committee and the RNC during the past three election cycles.
- Fifty-three senior executives from corporations opposed to the rule qualified as “Rangers,” “Pioneers” or “Super Rangers” – the honorary titles given to big-money

bundlers who have collected at least \$200,000 or \$100,000, respectively, for the Bush campaigns or \$300,000 for the Republican National Committee (RNC). These rainmakers personally have rounded up at least \$8.3 million – and probably much more – for Bush campaign efforts in 2000 and 2004.

- These 53 rainmakers came from 40 different corporations – representing nearly one in every five companies that opposed the rule. All but two of the companies belonged to either the Roundtable or the Chamber board of directors.
- Seventy-nine percent of the \$55.5 million total came from companies that belong to the Roundtable and their employees. The average company opposed to the rule, together with its employees, gave \$270,650 to Bush campaign efforts from 2000 to 2004.
- Companies opposed to the rule and their executives poured \$4.9 million into the Bush-Cheney Inaugural Committee, a “soft money” bonanza that funneled money directly to the incoming administration.
- The Roundtable and Chamber also created a fake “shareholders” group called Shareholders for Growth, which maintained a Web site to collect anti-rule comments and ran newspaper ads opposing the rule. The group’s sole purpose seemed to be creating an illusion of shareholder opposition to the rule. But Shareholders for Growth was comprised almost entirely of other corporate-funded, pro-business groups, such as 60 Plus Association, Americans for Tax Reform and the National Association of Manufacturers.

The corporations opposed to the shareholder access rule exemplify the problems the rule seeks to address.

- Many of the corporations opposed to the shareholder access rule epitomize the types of corporate governance problems the rule is designed to address – such as questionable but lucrative financial relationships between top executives and the board of directors, exorbitant CEO pay packages, and a poor record of responding to shareholder concerns.
- Public Citizen’s analysis of board ratings provided by the Corporate Library, an independent research firm that specializes in corporate governance issues, found that 46 percent of the corporations opposed to the shareholder access rule received a “D” or an “F” grade for Overall Board Effectiveness.
- Twenty-nine percent of the corporations opposed to the shareholder access rule paid directors for consulting, legal or banking services – a conflict of interest. Such side deals create a corporate culture where it becomes personally profitable for executives and directors to give each other a loose rein. Of the corporations opposing the rule, 64 percent of those with consulting, legal or banking side deals received a “D” or an “F” in “Overall Board Effectiveness” from the Corporate Library.

- Seventy-eight percent of the corporations opposed to the shareholder access rule employ one individual as both CEO and chairman of the board. But boards with separate CEOs and chairmen received better grades in “CEO Compensation” from the Corporate Library than those with one combined position. The 168 corporations opposed to the rule that had a joint CEO-chair position received an average “D+” grade in “CEO Compensation” from the Corporate Library.
- A significant majority of corporations opposed to the shareholder access rule award their executives questionable or inflated compensation packages. Excessive executive compensation is often an indicator that boards may be abrogating their fundamental responsibility to oversee executives on behalf of shareholders. Sixty-three percent of corporations opposed to the shareholder access rule received a “D” or an “F” grade in “CEO Compensation” from the Corporate Library.
- Many corporations opposed to the shareholder access rule use accounting gimmickry to disguise the effect of executive pay on their earnings. Seventy-six percent of the corporations opposed the shareholder access rule do not expense their stock options, which is a way of reducing expenses in order to inflate earnings. CEO pay is closely tied to earnings.
- One reason many corporate boards and CEOs have opposed the shareholder access rule could be that they fear the prospect of angry shareholders actually having an effective tool to hold them accountable. Shareholders have become more active on corporate governance issues: From 1999 to 2004, shareholder resolutions on corporate governance were up 66 percent – including more than 300 resolutions challenging executive pay filed in 2002 and 2003.