DUTY OF DISCLOSURE AND CORPORATE FRAUD: A CASE STUDY OF ENRON (THE COLLAPSED MULTI BILLION DOLLAR CONGLOMERATE IN THE UNITED STATES OF AMERICA)

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Abstract

Enron is a multi-billion dollars business conglomerate in the United States of America that collapsed as a result of the fraudulent practice of some of her directors who took shelter in the corporate conduct of company law practice that treated artificial entities as if they are not run by natural persons. The sudden collapse of the company brought into fore the age long argument amongst intellectuals and corporate executives that the entire management of a company is at the discretion or initiative of the board of directors could be fraught with a lot of dangers. Their opinion is that directors should be monitored at all material times to guide against collusion and fraud, since they may fail to give a true and fair picture of the financial state of a company to shareholders. And when this is done the company suddenly goes around. Shareholders and the general public suffer most in the circumstance as tax payer's money is used to pay for the cost of prosecution while shareholders run the risk of losing their investment and stake in a company they laboured so much to invest in. Put differently, directors represent the interest of shareholders in a company whom they owe the duty of care and good faith. These responsibilities portend, exercising appropriate diligence in overseeing the management of a company. Negligence connivance on their part amounts to corporate fraud which is a crime that is highly reprehensible. That was the lot of Enron as the apparent negligence on the part of her directors led to its sudden collapse. When the warning signals of the company's imminent collapse came into fore, some of their directors who were taken aback argued that since all their transactions were approved by their management whom they saw as one of the most creative and talented in the world and since their accounts were audited by Arthur Anderson - a top flight auditing company in the world, they had no cause to doubt the sincerity of their questions. The truth however remains that behind this smoke screen of due diligence purportedly painted by Enron management lies deceit and collusion amongst her directors who colluded with the corporations Chief Executive to abuse financial techniques and manufacture results it has not achieved. Acting in consent with J.P.M Chase City Bank U.S.A. the company falsified its accounts and presented a wrong picture of the company's state of accounts to the unsuspecting public. The consequence of all the manipulations led to the collapse ofEnron - one of the most accomplished business conglomerates in the United States of America. A step by step legal analysis of what went wrong and how the company collapsed forms the central focus of this paper. Drawing lessons from the sad experience, the paper intends to proffer legal solutions to forestall similar occurrence and at the same time serve as a stop gap measure for future conglomerates that may be moving towards the directors Enron traded into before its imminent collapse.

Introduction

Intellectual finesse demands that a better approach to this study must of necessity require a genera! definition of the operational concepts with a view to streamlining the basic essence of the discourse to an academic debate that is ongoing, which is, to put in place sound corporate policies that will checkmate the sudden collapse of giant conglomerate, whose directors cut corners to instigate and perpetrate fraud at the detriment of shareholders money.
And in consonance with the above assertion, the operational concepts in this study that requires definition/general explanation are as follows:

i. Who is a director of a company?
ii. What are his duties and obligations to his company?
iii. What is the position of the United States Law in relation to director's duty of disclosure?
iv. What is corporate fraud and how is it committed?
v. How did Enron got emerged into this corporate fraud?
vi. Are there any lesson(s) that should be learnt from Enron's collapse?

Answers to this riddle and policy prescriptions made thereto resolves the question that is germane to this study which is to the effect that where directors fail to exercise appropriate diligence in running the affairs of the company, the company goes bankrupt, shareholders and sometimes the general public suffer the most

Who is a director of a company?

A director of a company simplicita is an individual who acts in the overall interest of his company. He represents the interest of stockholders as owners of a company. He also performs certain oversight functions which entails exercising appropriate diligence in overseeing the management of the company.

In other words, he owes the establishment a duty of care and loyalty and must at all times act in good faith and in the overall interest of the company.

He are expected to be independent minded and when acting as directors they are expected to ask tough questions and probe opaque answers and display sufficient skill and fortitude to say no to transaction that does not look right.

Along with the management and the auditors, they share the same responsibility of providing to the company's shareholders a fair financial statement that ensures technical compliance with the **Generally Accepted Accounting Principles**.

Enron's directors failed short of these policy expectations and engaged in a highly complex fraudulent business manoeuvring that ultimately led to the collapse of the company. Having noted this misnomer, it becomes highly imperative for us to look at the historical basis of the duty of disclosure from sister jurisdictions. The duty of disclosure as was interpreted by the English law becomes our first point of reference.

Duty of Disclosure as was Interpreted in the English Law

Historically, English Law of disclosure has been seen as a mechanism to assist creditors in accessing the level of risk involved in dealing with a limited liability company. In that context, financial information in the form of annual accounts, and audited accounts is of particular importance to the risk bearer.

In Secretary of State for *Trade and Industry v. Arif*[1]: The court held that the statutory machinery for the protection of creditors must at all times remain, disclosing adequate accounting records as is required by Section 221[2] of the English company's Act of 1985 which is pursuant to Section 47[3] of the insolvency Act of 1986 and failure to fulfil this obligation makes the directors unfit to manage a company.

Similarly In the case of *Official Receiver v. Fairall*[4], the secretary of state sought a disqualification order against Mr. Fairall alleging non compliance with Section 6[5] of the company's director's qualification Act 1986. That is failure to maintain accounting records as required by Section 221 of the companies Act 1985. The court held his conduct actionable and declares him unfit to be the director of a company.

However, the law as a matter of fact emphasizes less disclosure for small private companies and more for large public companies as they are subjected to ever - increasing transparency obligations.

Financial Service Act Service of 2006[6] maintained that listed companies in devising appropriate disclosure strategy must make the best use of information technology and make rules flexible enough to respond to changing business needs and practice of shareholders.

In other words, where investors needed appropriate information's facility to inform investment choices by companies to enable them maintain a transparent business profile the law requires them to keep accounting records sufficient to show and explain the company's transactions and to disclose with reasonable accuracy its financial position at any time. Failure to do so is an offence by every officer in default.

The importance of disclosure is recognized by European Union initiatives, since the proposed Transparency Directive (TD) imposes disclosure requirements on companies once securities have been admitted to trading.

[1](1997) 1 BL CLC.
[2]Section 221 of the English Company's Act of 1985.
[3]Section 47 of the Insolvency Act of 1986.
[4](1994) 2 BCL 34.
[5]Section 6 of the Company's Directors Qualification Act of 1986.
[6]Financial Services Act Service 2000.

(a) Disclosure of Director's Remuneration

In a system of good corporate governance, the remuneration of directors and key senior executives should be sufficient to attract and retain high calibre manpower, motivate the individual towards the achievement of performance that is in the best interests of the company and its shareholders.

A significant proportion of Executive Director's remuneration should be structured in such a way as to link rewards to corporate and individual performance. Because it is clearly in the interest of good corporate governance that directors should be motivated to perform, but it is important that the performance target set for each individual directors are (a) sufficiently and (b) related to objectives that are of interest to the company and its shareholders.

Until the 1990's in the United Kingdom and 2002 in the United States, director's remuneration was not seen as a major problem of corporate governance or even related to corporate fraud. The principle of good corporate governance to checkmate fraud is that remuneration should be linked to some extent to the company's performance, so that a director will earn more if the company does well, but less if it does badly.

In the UK, the problem of disclosing director's remuneration was further aggravated by the fact that in many listed companies the Chief Executive Officer and Executive chairman were involved in deciding their own remuneration package. The general belief of the public was that directors pay themselves far too much and, this has a damaging effect on the stock market. Private investors become reluctant to invest in companies that reward their leaders far more than they deserve. This was particularly damaging to the capital market when public anger is stirred against directors who continue to pay themselves more even when their companies are performing badly. his led to the campaign against "Fat Cat" directors such as the leaders of British Gas and United Utilities.

Similar concern arose in the US when Alan Greenspan, Chairman of the US Federal Reserve commenting in July 2002 on the collapse in the stock markets accused senior executives of "Infectious greed" which is properly interpreted to mean corporate fraud[7], also in September 2002, the president of the Federal Reserve in the US, Bill McDonough, attacked the high levels in remuneration for chief executives as morally dubious and corporately outright fraud.

(b) **Disclosure Requirements of Directors Remuneration**

The English companies Act of 1985 requires that details of a director's remuneration should be made public. The disclosure requirements cover all amounts receivable by the directors in respect of their services as directors of the company (and where relevant, of its subsidiaries) regardless of who actually makes the payment. The

[7]Robert Monk & Nail 2000.

Legislation requires basic disclosure to be given by all companies and then makes a clear distinction between quoted and unquoted companies in requiring more detailed information to be given; although greater details are required in the case of quoted companies.

The director's remuneration report Regulations 2002[8], introduced some significant changes to disclosure requirements for quoted companies for accounting periods ending on or after 31 December 2002. For this purpose, a quoted company is defined as a company whose equity share capital is (a) include in the official list of the London Stock Exchange (b) Official listed in an EEA state or (c) admitted to dealing on the New York Stock Exchange or the NASDAQ Exchange[9].

The basic requirements of the Act is that every company should disclose in the notes to the accounts; the aggregate of the emoluments paid to or receivable by the directors in respect of their qualifying services (which includes services as directors into a pension scheme where the benefits depend on the level of contribution paid i.e. defined contribution schemes, and the number of directors who are accruing retirement benefits under defined benefit scheme. A pension under scheme under which a director will be entitled to receive both money purchase benefits and defined benefits is classified as a defined benefit scheme purposes.

Where a scheme provides for the director to receive money purchase benefits or defined benefits whichever is greater, the company is allowed to assume for disclosure purposes that the benefits will be whichever appears more likely at the end of the financial year in question. Listed companies must also give additional details on director pension arrangements in director remuneration report.

In a holding companies, director remuneration in accounts of the holding company will comprise of remuneration paid to directors of the company in respect of their services to the company and management of the company and group and if holding company director are also director of one or more of the subsidiaries, remuneration paid those who are directors of subsidiaries but who are the holding companies is not disclosable in theaccounts of the holding company. The same disclosure requirements apply in the holding company's account, regardless of whether some or all the remuneration costs are rechargeable to the subsidiaries.

Also where the holding company recharges the subsidiaries with the cost of remuneration the directors of each subsidiary should disclose as directors remuneration the amount paid to the holding company and makes a global recharge to the subsidiaries to cover general management cost, including directors remuneration, but the element for directors remuneration cannot be separately identified, an appropriate apportionment should be made for disclosure purposes.

[8]Sticks (1992).
[9]Cronughy Galai 2 Market 2000.

Where the holding company does not recharge the subsidiaries with the costs of remunerating their director, the costs borne by the holding company are still disclosable as director's remuneration in the accounts of the subsidiary - it is not acceptable simply to disclose the fact that the director's have been remunerated by the holding company and the quantity that they have received. However, it may be helpful to explain that this cost has been borne by the holding company and is not changed in the subsidiary's accounts.

Where the directors of a subsidiary company are also directors or employees of the holding company, it is sometimes argued that the holding company remunerates them only for their services to the holding company and that they receive no remuneration in respect of their services as director of the subsidiary.

The validity of this agreement will usually depend on the amount of time that the director or employee devotes to the subsidiary company. If the time is relatively small, it may be acceptable that he or she does not receive remuneration for services as director of the subsidiary. In this case, a brief explanation should be included in the subsidiary's accounts.

Section 318 of Companies Act 1985[10] requires that where a director has written contract of service with the company, the company should retain a copy of the contract at one of the following locations (a) the company's registered office, (b) The place where the register of members are kept. (If this is not the registered office) or (c) the company's principal place of business (provided that is in the part of Great Britain where the company is registered. The Act also requires that if a director does not have a written contract of service, the company must keep a written memorandum of the terms of his or her appointment. The same rules apply to a variation of a director's contract.

A parent company is also required to keep copies of service contracts between its subsidiaries and their directors or written memorandum of terms if these contracts are not in writing. Copies of all contracts memoranda must be kept in the same place. If they are not kept at the registered office, the company must notify the registrar of companies where they are held and of any changes in location. Company's Act Section 318(6) emphasizes that these arrangements apply equally in the case of shadow directors.
However, there is no formal requirement for a company to retain a copy of a contract, variation or memorandum when the unexpired term is less than twelve months or where the contract can be terminated by the company within the next twelve-months without the payment of compensation.

Where a director of the company, or of one of its subsidiaries, is required under his or her contract to work wholly or mainly outside the UK, the company is not required to keep a copy of the contract, but it must keep a memorandum giving the director's name

[10]English Companies Act, 1985.

and the provisions of the contract relating to its duration, in the case of a contract for director of a subsidiary, the name and place of incorporation of the subsidiary must be recorded in the Memorandum. These memoranda must be kept in the same place as the contracts and memoranda relating to the other directors.

Section 318(7) Company's Act 1985 maintain that any member of the company is entitled to inspect the copies of the directors contracts of service (or the memoranda where there is no written service contract) without charge. If the company refuses to allow a member to inspect a contract or memorandum, the court can require immediate inspection.

The following information must be disclosed and is subject to audit; for each director who served during the financial year, the total amount of salary and/or fee bonuses. It must also include expenses allowances that are chargeable to UK income tax; any compensation for loss of office and similar payments. The estimated money value of any benefits in kind and the sum total for the previous financial year, the nature of all elements of a remuneration package which is not cash. For each director who served during the financial year, the number of shares subject to a share option (distinguishing between those with different terms and conditions at the beginning of the year, or the date of ceasing to be the director if earlier).

Information on share option awarded, exercise and lapsed during the year, and any variation to terms and conditions for each share option that was unexpired at any time during the year the price (if any) paid for its award; the exercise price at the year and date from which the option can be exercised; and the date on which the option expires.

A summary of any performance criteria upon which the award or exercise of a share option is conditional, and any changes made in the year. For any share option exercised during the year the market price at the time of exercise. For each share option that was unexpired at the end of the financial year the market price at the year and date and the highest and lowest market price during the year.

For each director who served during the financial year, details of interests at the beginning of the year, or the date of appointment if later awards during the year, showing whether they crystallize in the year or in subsequent years. The money value and number of shares, cash payments or other benefits received during the years and interests at the end year, or on ceasing to be a director if earlier.

For each director who served during the financial year and has rights under a defined retirement's scheme; details of any changes during the year in their accrued benefits calculated as recommended by the Institute of Actuaries and Faculty of Actuaries and the equivalent transfer value at the end of the previous year and the difference between this and the current transfer value, after deducting any contribution made by the director who served during the financial year and has rights under a money purchase retirements scheme, details of the contributions paid or payable by the company during the year,

Details of certain excess retirement's benefits paid to directors or former directors. Details of any significant awards to former director (e.g. compensation or loss of office pensions) for each director who served during the financial year, the aggregate amount of any consideration (including any benefits in kind paid to, or receivable the service of the individual as director.

Also the following information's is required to be disclosed, but is subject to audit. The name of each director who was a member of any committee that considered directors remuneration, the name of the person who materially assisted the committee and, if they are not a director, the nature of other services provided to the company. The name of remuneration consultants who materially assisted any committee, what other services they have provided to the company. The name of remuneration consultants who materially assisted any committee; what other services they have provided to the company, the combined code also requires detail of any other connection with the company to be made available (i.e. in. the report or on the company website).

A statement of the company's policy on the directors remuneration for the forthcoming year for subsequent financial year, drawing attention to any factor specific to the company - this must include for each individual whohave served as a director between the end of the financial year under review and the date on which the annual reports and accounts are laid before the members.

A detailed summary of any performance condition in respect of award under share options or long term incentives; an explanation of why these performance conditions were chosen; a summary of the method used in assessing whether the performance condition are met and why those methods were chosen, and if any performance conditions involves comparison with external factors a summary of the factors to be used and the identity of any company or index used for comparison purposes.

The relative importance of elements of remuneration that are related to performance and those that is not. A statement of the company's policy on the granting of options, or awards under employee share schemes, and other long term incentive schemes; and an explanation and justification of any departure from the policy during the year. A description and explanation of any significant changes to the terms and conditions of entitlement under share option or long term incentives scheme are not subject to performance condition. An explanation of, and justification of grants under share option or other long-term incentive schemes that are awarded in one large block; a summary of the company's policy on the duration of director's service contracts; and on notice period and termination payments under those contracts.

The information on the contract of service, or contract for services, of each person who served as a director during the financial year; date of the contract, the unexpired term and any notice period any provision for compensation on early termination and sufficient information on any other provisions to enable a member to estimate the

company's liability in the event of early termination of contract. The unexpired term of any directors service contract of a director proposed for election or re-election at the forth-coming AGM, and if any such director does not have a service contract, a statement of that fact.

An explanation of any service contracts which provide for, or imply, notice periods in excess of one year, or which include provisions for predetermined compensation which exceeds one year to former director's (e.g. compensation for loss of office pension) an explanation of and justification, for showing the total shareholder return for the last five years on; a holding of the class of equity share whose public trading has resulted in the company meeting, the definition of a quoted company; and a hypothetical holding of shares, based on a broad equity market index, together with the name of index and why it was chosen.

The combined code and Financial Services Act 2002[11] also maintained that the content of any remuneration must explain how it applies the principle in the code both main and supporting principles, including any special circumstances that have led to a particular approach. The company must comply with the provision of the codes or, where it does not provide an explanation; performance related elements remuneration should form a significant proportion of remuneration and this should follow the provision of discount; where an executive share option should not be offered at a discount; where an executive director serves as non-executive director else - where, it should be stated whether the director retains such earnings and if so what the remuneration is.

Contract should be set at one year or less, with a robust line regarding mitigation. It may be necessary to offer longer period but this should reduce after the initial period. Remuneration committee should consist of at least three members who should all be independent directors. Members frequently and attendance should be stated; terms of reference and delegated authority should be available and should include setting the remuneration for the chairman and executive directors and the structure and level for senior management. Explanation of who sets non executivedirectors remuneration.

If options are granted shareholders approval should be sought in advance. Significant changes to existing and all new long - term incentives should be approved by shareholders, except as provided in the listing Rules; how performance evaluation of the remuneration committee has been conducted and the steps the board has taken to ensure that members of the board, and in particular the non executive directors, develop an understanding of the view of major shareholders about their company shall be disclosed, the amount of any remuneration receivable by the company's auditor.

In the note to the annual accounts of a shall or medium sized company. It must include the auditing of the accounts. Where the remuneration includes benefits in kind, its nature and estimated money-value shall also be disclosed in the notes. Where more than one person who was at any time during the period to which the accounts relates an associate of

[11]Financial Services Act 2002.

the company's auditor during the period to which the accounts relates, separate disclosure is required in respect of remuneration of each such person.

In the notes to the annual accounts of a company which is not a small or medium sized company, there shall be disclosed the amount of any remuneration receivable by the company's auditor for the auditing of the person who was, at any time during the period to which the accounts.

Where remuneration includes benefits in kind, its nature and estimated money - value shall also be disclosed in the notes. Separate disclosure is required in respect of the auditing of accounts in question and each type of services specified. Separate disclosure is required in respect of services to the company or its subsidiaries on the one person who has been appointed as a company's auditor during the period to which the accounts relate, separates disclosure is required in respect of the remuneration of each such person and his associates.

United States Law and the Duty of Sclosure

In the United States the Federal Securities Law is pre-eminence in the area of disclosure. The Securities Act of 1933 and the Securities .Exchange Act of 1934 and rules adopted by the Securities and Exchange Commission pursuant to the statue[12], have served as the primary laws governing disclosure to shareholders and the market place in connection with offerings of securities, the purchase and sale of securities, proxy solicitations, tender offers and formal and informal reporting of corporate performance and development in security and exchange commission public filling and press releases. Also federal courts interpreted the federal securities law to imply causes of action not specifically set forth in the statute and to address claims brought as class actions. These claims can be brought against the corporation and its directors and officers, purchasers and sellers of securities, person otherwise having a duty to investors who participates in the alleged disclosure violations.

Disclosure claims can also be brought against corporate directors based on the Sarbanes - Oxley Act of 2002[13]. The state common law theories on fraud and negligent misrepresentation as was established in the case of Enron corporate Security litigation; were Bayerische Landes bank, Standard Chartered Bank, et al; V JP Morgan; et al[14]; Central to this case is a breach of disclosure which the plaintiff contend was a year long fraudulent multi - billion dollar series of loan which JP Chase and City prepaid commodity. And that JP Morgan and Chase Bank helped Enron to abuse structural financial technique to manufacture results it had not achieve and they report those result in a false and misleading manner.

[12]Securities and Exchange Act 1934.
[13]Sarbanes Oxley Act 2002.
[14]Ibid .

That they were actively engaged in helping Enron falsify its financial statements while there were syndication to other banks servicing as co-agents for the other Banks credit facilities for Enron. That both Banks knew that Enron accounted for its obligations under the prepay transactions as liabilities from price risk management activities rather than due process. Nevertheless both lenders recognized that the prepay transactions were essentially loan. In this they violated at a minimum, the Security and Exchange Commission’s laws that required full fair and accurate disclosure of financial information.

Corporate Fraud

Corporate fraud encompasses an array of irregularities and illegal acts characterized by international deception. It can be perpetrated for the benefit of or to detriment of the corporation and by persons outside as well as inside the corporation.

The world of investing is fascinating and complex and it can be very fruitful, but unlike the banking world, where deposits are guaranteed by the Federal Government, stocks, bounds, and other securities can lose value, there are no guarantees. That' is why investing is not a spectator sport. The laws and rules that govern the securities industry in the United States once again is institution or private individuals should have access to certain basic facts about an investment prior to buying it.

Even for a lay man there are basic economic principles that are held sacred; these traditional concepts include balance sheet and earning statements prepared according to Generally Accepted Accounting principles (GAAP), the availability of cash to meet corporate needs and the ability to raise new cash from outside sources. Unfortunately our so called corporate gurus violate these basic corporate economic sanctimonious injunctions.
To achieve this, Security and Exchange Commission requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to judge for themselves whether to buy, sell or hold a particular security. Only through the steady flow of timely, comprehensive and accurate information can people make sound investment decisions. The result of this information flow is a far more active efficient and transparent capital market that is so important to the nation's economy. SEC has enforcement power and brings hundreds of civil securities laws.

Typical infractions include insiders trading (buying and selling a security in breach of a relationship of trust and confidence while in possession of materially non- public information about the security, misrepresentation or omission of important information about the security), accounting fraud and providing false or misleading information about securities and companies that issue them. The manipulating of market price of securities, stealing customer fund or securities, violating broker-.dealers responsibility to treat customers fairly and sale of securities without proper registration. All these can in other words be called corporate fraud. Included in the list are mail fraud, wire fraud, bank fraud and making false and fraudulent statements in a matter to Security and

Exchange Commission, and making false and fraudulent statement in corporate reporting filed with the Security and Exchange Commission.

In recent time corporate fraud now has become endemic and has developed a fresh momentum of its own, its iniquitousness raises the level of temptation evenfor those corporations who would otherwise have stood apart. The Association of British Insurers estimates that fraud and corporate fraud cost the UK up to £12 billion a year, or at one third of the cost of all crime[15]. Following the adoption of combined code and the Turnbull report by the London Stock Exchange, compliant board are now being compelled certainly to assessing the effectiveness of their internal control and risk management.

(a) **Corporate Fraud and Corruption**

Although specifically applicable to listed companies the combined code and Turnbull Report are being rolled out across the economy, impacting upon public bodies. And it is significant to note that all these contemporary developments in corporate governance in the both U.S and UK were born out of unimaginable scale and endemic of modern corporate fraud. In the US it was the fraudulent financial reporting of Wall Street journal that listed companies that led to the Tread way Commission being set up. In the UK, spectacular corporate collapsed was linked to fraud (for instance, Polly peck, Maxwell corporation, Bcc, etc) led to the Cadbury Committee, whose conclusions were to be reviewed six years later by the Hampel committee.

Arguably, Commentators have always insisted, that corporate fraud is a consequence of the way businesses are run. This is little surprise as modern marketing makes that temptation irresistible especially in this age of structural and derivate finance. As never before, there is a perceived personal imperative for the acquisition of material things but many are excluded from significant, legitimate participation in this rampant consumer society. In the market economy, the very level of economic prosperity which we enjoy has been achieved by persuasiveness of a simple massage. That we need to acquire more coupled with relentless quest of corporate greed and saturated commercial advertising in the world of cable network.

Most people held that corporate fraud is result of corporate greed which is a direct result of eroding corporate governance ethnical standard. Others maintained that for many companies, increase .competition, stricter government controls and emerging global markets have raised the situations that corporations were unprepared to deal with hence resort to fraudulent make ups.

That Companies in competing to win at global level, entering into partnerships, alliances and joint ventures in every corner of the globe is germane, the success of the relationship depends greatly upon the company's representative understanding and profit at the exceptions of all others. That in global scope and culture with time-

[15]R. Krankman The Anatomy of Corporate Law Oxford Press.

honoured tradition of concluding business devoid of manipulations is what every corporation aspire to achieve but this is now an increasingly difficult challenge, fuelled by the changing times, relationships and situations facing companies today.

Relationship with other companies are changing through alliances, partnerships and joint ventures to a point that at different times you may be dealing with other companies as customers, supplier or competitors- yet you still expert employees to recognize and respect those differences and the legal risk they may present. In today's corporate environment, it's argued, that there is no way that a rule book or library of polices are going to guide those actions they must be by a shared understanding of basic values and principles of integrity. The absence of these values is simply the reason behind Enron's abuse of structural financial techniques to manufacture results it had not achieved and then report those result in a false misleading manner.

Others held that corporations engage in corporate fraud because they find that the benefit outweighs the costs, or to put it in another way, the directors who take the risk of corporate fraud decide that the benefit accrued is enormous: a single price - fixing case was found to cast the affected consumers more than all the robberies of that year.
Most has also insisted that fraud tend to exist in corporations when corporations develop their own methods and culture that guide employees' thoughts and actions. That culture is a web of attitudes and practice that tends to replicate and perpetuate itself beyond the tenure of any individual manager.

That culture may still respect the law or breed contempt and malfeasance. Where the corporate culture has been corrupted, it may be impossible to eradicate this problem simply by addressing individual's bad conduct unless by taking direct measures against the itself. This was evident in which Enron corporation together with its subsidiary conspires to carry out one of the largest and most egregious frauds in United States corporate history, a fraud which ultimately led to its collapse.

Corporate fraud is not without its victim. Those affected include the shareholders often thousands of them. As the case of Enron revealed that long-term shareholders certainly have an interest in making societal and corporate interests compatible, but they are not likely to have the resources to be able to make that interest felt throughout the company, either before or after the fact.

On the other hand fraud may be seen as any act which seeks a profit at the expense of another party through the practice of deception, collusion or any unethical activity. Corporate fraud may be any illegal acts characterized by deceit, concealment or violation of trust. These acts are not dependent upon the application of threat of violence or of physical force. Corporate fraud may be perpetuated by individuals and organizations to obtain money property or service, to avoid payment or loss of services: or to secure personal or business advantage. However, corporate frauds are mostly characterized by both the use of deception to obtain an unjust or illegal statement by one or more individuals among management, employees or third parties.

It does involves falsification or alteration of accounting records or other documents; misappropriate assets or theft: suppression or omission of effects of transactions from records or recording of transactions without substance; and international misappropriation of accounting policies, or wilful misrepresentation of transaction or of entity's state of affairs, e.g. the setting up of pre-pays by Enron corporation.

Enron Corporation's Breaches of Disclosure and Corporate Fraud

Corporate commentators like Martin Lipton has insisted that the practice by which Chief Executive officer's (CEO) offer guidance about their expected quarterly earnings performance, analyst set targets based on that guidance, and them companies try to meet targets within the penny is an old one.

But in recent years, the practice has become so enshrined in the culture of Wall street that the men and women running public companies often think of little else they become preoccupies with short term success a mindset that can hamper or even destroy long - term performance of shareholders. This trend could be called the tyranny earnings.
To meet these mid term target analysts and portfolio managers accepted Proforma earnings as a substitute for General Acceptable Standard practice earning, allowing companies with little or no real: structural finance, to using special purpose entities that will be marked for purpose of creating fictitious revenues keeping debt off the balance sheet, postponing or not recognizing losses and creating earnings where none existed.

Accordingly, Directors become and have characteristic of club membership with written, unwritten and intuited rules. Dissertations become the primary requirements for culpability. Directors now simply can not speak or write critically about the works of their colleagues and nobody can now know times of a corporate crisis until final collapse. While we all know that for corporate governance what a board of directors does and does not do is of critical importance.

Boards of directors, while independent in name, were not really independent and did not act as independent monitors of management. Ethnic codes were waived without directors understanding the real purpose of the transactions in question and without disclosure to the shareholders. Board and Board committee meeting were short and unfocused. Audit committees didn't understand the accounting and failed to insist on the accountants describing the principal issues necessary to understanding.

This lack of transparency prompted the tale that some time ago, say just before the turn of the century, a company known as Enron was considered a profitable, highly successful and prestigious corporation. By 2000, phenomenal growth had made Enron the seventh largest corporation in the United States.

Its executives where considered the best of the best and were paid frequently and well. The firm won praise and awards from the business community and the press. Fortune magazine called Enron "the best place for an employee to work".
The most innovative company in America for five consecutive years (February 19,2001, Feb21 2001, March 11, 1999, March 2, 1998, and March 13, 1997).

However, most employees and investors did not know that there was turmoil on the horizon. Although Arthur Anderson, the largest of the big five accounting firms in the world know. Many situations including some under Anderson's control waved red flags in front of Enron's board of directors but they did not stop the music.

As we all know in corporate governance structure, one of the player's responsible for overseeing the operations of publicly held corporations is the board of directors. Directors are charged by law to be the fiduciaries, trustees who protect the interest if the corporate shareholders. In that capacity, they are supposed to exercise their best business judgment on behalf of those shareholders.

They are supposed to be independent while they are expected to be detectives, they are expected to ask tough questions on management, to Probe opaque answers, and to display sufficient skill and fortitude to say no to transactions that do not look right. Along with the management and the auditors the board shares the responsibility to provide to the company's shareholders a financial statement that is fair representation of the financial position of the company. This responsibility requires more than ensuring the company's technical compliance with Generally Accepted Accounting principles.

As the second circuit Court of Appeals held in a widely quoted opinion that technical compliance with genera) Accepted Accounting principles? (GAAP may be evidence of acting in good faith, but not necessarily conclusive, the present financial position of a company. Enron's financial statement did not, and the board's role in that failure is evidenced.

The decision to engage in these accounting gimmicks and deceptive transactions were fuelled by the very human but un-admirable emotions of greed and arrogance. Putting a growth gloss on the balance sheet pumped up the stock value, and the rise in the stock price, regardless of the underlying true value of the company, was for many, the measure in the 1990's for judging corporate success. The board that was supposed to be the check on the greed and the arrogance, in fact was not.

Lesson from Enron's Fraud and Investors Expectation

Proper Corporate governance is the most important lesson that should be learnt from Enron's failure. When a corporation is properly governed there will be no room for fraud. By corporate governance we mean a system by which business corporation are directed and controlled. The corporate governance structure specifics the distribution

of rights and responsibilities among the different participants in the corporation, such as the board, mangers and shareholders and other stakeholders, and spell out the rules and procedures for making decisions and Corporate affairs. By doing this it also provides the structure through which the company objectives and monitoring performance. Corporate governance is also about promoting corporate fairness, transparency and accountability; Disclosure is the means to attend to that goal.

Disclosure as we have seen is an issue that is highly regulated under securities acts of many Nation. However, there is room for voluntary disclosure by companies beyond what is mandated by law. Most countries generally agree on the need for directors to disclosure their own relevant shareholders. Generally this is required by law, but some guidelines and best practice documents address it as well.

Similarly, even though directors are usually subject to legal requirements concerning the accuracy of disclosed information, a number directors of codes from both developed and developing nations describe the board's responsibility of disclosing accurate information about agenda items, prior to the annual general meeting as lacking confidence and integrity in the financial market.

Shareholders expect managers to run the business in a way that will encourage a supportive governmental and societal climate to capitalist enterprise, and that means that the shareholders concern is to hold management accountable for their conduct to business within the rules. It remains a fact that shareholders also share some of the responsibilities for failing to establish mechanism for preventing and responding to corporate fraud in the past.

In the future, shareholders need to make it unmistakably clear that continued corporate crime will not be tolerated. But it is the job of the directors and management to make sure:-at information flow assure that notice of potentially criminal activity is received at the appropriate level, that the company develops incentive systems to assure compliance with the law that has clear and undivided attention of appropriate personnel and structured are established to monitor, review, document and validate compliance with the law.

More than ever before it is clear that active stockholders participation is highly needed and that might be able to force greater corporate compliance with the law in some area, although, as we have pointed out their concern is often corporate

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More than ever before it is clear that active stockholders participation is highly needed and that might be able to force greater corporate compliance with the law in some area, although, as we have pointed out their concern is often corporate growth and dividends. Far reaching corporate reform however, depends on altering the process and structure of corporate decision-making.

Traditional legal strategies generally do not affect the internal institutional structure. At present few clear functions are usually specified for corporate Boards of Directors, they frequently have served as rubber stamps for management. If functional relationship and responsibility to actual corporate operations were established, directors would be responsible not only for the corporate financial position and stockholder dividends but also for the public interest"! which would include the prevention of illegal and unethical activities undertaken in order to increase profits

Conclusions

Following the collapse of Enron there has been a wide spread feeling among the general public that the U.S corporate structure is eternalized with conspiracy, fraud, abuse and lack of duty of disclosure by directors under the facade of corporate entity.

There is therefore the believe that governments and regulatory bodies are sharpening corporate laws and shifting what is rather civil remedies to penal laws thereby leaving the ethical issues unattended to.

In the past the courts have been so lenient in its sentencing on corporate fraud, as they have sentenced offenders to imprisonment and heavy fines community service, probation and restitution which is not adequate substitutes for imprisonment. Such alternative sentences often impose little hardship on offender. They should be substituted with more meaningful sentences to avoid them or make room for deterrence.

There is also a feeling of overall system failure - where other people must have either turned a blind eye to (or even supported) those whose names have become a litany of shame in the corporate world. It is evidently clear that most top executive consistently held value as the ultimate success. In most cases the importance attached to achieving some notable success in life far outstrips any other value. And corporate prize achievement just as highly; as they were rewarded handsomely, not just with money and stock options but promotions an: recognition and high social standing create room for overbalance. Achievement motivation is clearly a great asset but its values become dysfunctional when it is not balanced.

Other important values are needed to moderate and control the tendency to assume that the end justifies almost any means, an uncontrolled achievement drive quickly become easily as obsessive as to successes are forgotten and only the next person suffers. Those in the grip of dysfunctional achievement needs are like alcoholics, always looking for the next drink to keep them in the glowing state of immediate gratification.

If we want to know why ambitious executives take massive risk, it is because we value that fuels much of the craze for highly leveraged takeover and buy-outs encourages such risk. Their achievement drive is balanced by their concern to be seen as good corporate citizens.
Arguable the business world allowed it to happen, turning a blind eye as stock raced higher and paper profits poured in. indeed, in our own obsession with individual achievement, we allowed all kinds of false metric to be used to produce yet more successes thereby compromising ethical standards.

If executive pay is to be linked to real corporate progress, it must go down as easily as it goes up and the executives themselves should not be allowed to change the rules constantly to their own advantage. We now ignore values at our own peril. In the past few decades the emphasis has been on competencies and skill yet the way that we use the skill we have is determined by our values, and a highly skilled person driven by some personal obsession will not always turn out to be a visionary leader.

We should not vilify the putting of personal values before the needs of employees, stockholders and the economy at large because when that happens, the innocent will suffer and we will shake our heads in shame since the causes of harmful behaviour are largely clear, and our own compliance allow them to continue to push for growth far in excess of what can be sustained, and then turns out to be dubious accounting and fraudulent practices to cover up the mistake.

As Wall Street demanded that each quarter growth should exceed the last, and drive up shock price. Whenever these demands are met or exceeded, top executives found themselves on a wild roller coaster ride at ever increasing speeds. The rewards for staying on the track have been enormous; dazzling incomes from stock options and swelling reputations, from all those around them. No wonder that some have fallen for this kind of life, where the constant stimulation is matched by the equally consistent supply of proofs of outstanding achievement. When the whole car begins to come off the rails, accountants and consultants could earn big money by offering clever means to hold it on the track while speeding up the ride.

It is clear that most common value that balances achievement and stimulation is high regard for justice and fairness. This value is shared by some top executive while others don't.

Those who keep to this consistency are not to be tempted by the idea that the behaviour in a corporate setting is all about cutting corners. It is this inner standard not rules lay down by Security and Exchange Commission or Congress that keeps them going.

Unfortunately Enron did not stick to those standards. The synthesis was rather Enron's lot, the directors failed to give a fair view of the company's state of finances to shareholders. Rather a clean bill of health was given which attracted massive business patronage while behind the scene organized corporate fraud was litigated and carried out by a few of the company's directors which in the long run ultimately led to the collapse of this giant conglomerate.

The lesson from this collapse is that transparent business practice and good corporate governance must be the key to a successful business management.