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Notes from the boardroom

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corporate boards showed that more prospective directors turned down offers to serve in 1979 than in any of the prior seven years. Of the firms surveyed, 13 percent had at least one candidate turn them down. A well-known, prestigious corporate name did not prevent this phenomenon either. The 128 firms surveyed, which had sales over \$1 billion, experienced a turndown rate that was three times that of 1978.

The way the nominating committee goes about the critical job of selecting candidates and getting the acceptances of its future board members is a vital assignment. The committee has to be sure that various constituencies are represented and yet do not upset the balance of viewpoints on the board as a whole. As more minorities, academicians, and representatives of various social concerns become board members, the manner in which the committee is structured—the nature, breadth, and objectivity of the candidates that satisfy these needs—will be critical to the future direction of the corporation.

What all this says to me is that the nominating committee is an increasingly important part of the corporate world. At present, and hopefully in the future, it can be viewed as a means by which the corporate world can deal voluntarily with some of the major criticisms being leveled at it.

In short, our boards are responding to the reasonable demands for accountability from a variety of constituencies. And the nominating committee's efforts to help the corporation balance the needs of shareholders, employees, and the community is squarely in the middle of this action. It is a tough and pivotal middle, in fact, and perhaps the fulcrum on which will turn the corporation's future course of action. ▲

Notes from the Boardroom

by RODERICK M. HILLS/Former Chairman, SEC

The following excerpts are from a presentation made at a Houston directors' seminar by Mr. Hills, a partner in the law firm of Latham, Watkins & Hills.

I first joined a company that had directors and stockholders back in 1960. It was a small electronics company, and as I walked into the room, I saw an older gentleman sitting at the table. He was obviously a veteran of these meetings, and I said to him, kind of shyly, "What is it that we're supposed to decide here?" He said, "Well, Sonny, you come into each board meeting, and you just ask yourself one question: Should we fire the boss? If the answer turns out to be no, just keep your mouth shut, and smile a lot."

Today, we're asked by the law to make a lot more decisions. But I seriously question whether any of these mandated decisions are helpful to the primary mission of directors, which should be the corporation's productivity and profitability.

As a director, it is my responsibility to know what the other directors bring to the table. Is there sufficient experience in the group to provide an overview for this company? By reason of background, training, knowledge, intelligence, does this group have the minimum ability needed to

judge the business? I didn't choose them. Probably the president did. But isn't it my responsibility, the board's responsibility, to look around each year and decide? And that evaluation should be done, it seems to me, before the old slate is renominated just on the grounds that we all play golf together a couple of times a year.

One day some judge is going to proclaim in a learned opinion whether or not a board has a sufficiently independent character to make the decisions a board needs to make. If he's my kind of judge, he won't much care whether there is a given number of outside directors and so many inside directors. He won't very much care whether there is a nominating committee or what the board's structure is. What will matter is that there is real independence, and that it is being exercised to decide whether to reject a tender offer, to go private, or to approve a company's pricing mechanism.

Rather than have the SEC tell us how directors should act, the courts can cause this standard of independence to evolve, based on practical experience and proper corporate performance. The judicial role—so played—will be to bring the more deficient companies up to that standard. That, after all, is how the common law evolved in this nation. ▲