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Disney's loss is Eisner's gain

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Full Text (556 words)

[Headnote]
Michael Eisner has used "good governance" to silence critics.

How very convenient for Michael Eisner. Under the banner of corporate reform, Eisner and his allies on Walt Disney's board have eased out his harshest critics and bought the embattled CEO more time to lead a long-overdue turnaround at the company.

Two directors-Roy Disney, a lifelong company executive and the nephew of founder Walt Disney, and Andrea Van de Kamp, a Sotheby's executive-were forced off as a result of the governance guidelines. Roy Disney passed the mandatory retirement age of 72, while Van de Kamp was voted off the board last winter when it reduced its size. Then Stanley Gold, who manages the Disney family assets, quit in frustration because he'd been stripped of influence. They all say governance reform at Disney has been a farce. "This board has become an enabler to entrenched management," said Gold.

Shareholder activists agree. "Disney isn't so much a company as it is a dynasty," says Paul Hodgson of the Corporate Library, a firm that rates boards and directors for institutional investors. It ranks Disney's board as one of the ten worst among 1,800 U.S. public companies.

At the very least, Disney's new governance guidelines, adopted a year ago, have had some perverse effects. Gold, who wants to get rid of Eisner, had his director powers reduced because he was not deemed "independent" under the rules. Roy Disney, as a major shareholder, had hoped to be exempted from the retirement age, but was not. Van de Kamp, meanwhile, charged that Eisner and his backers voted her out because of her dissenting views. "Michael has used the shield of corporate governance to get rid of people who were not in his pocket," she said.

Asking the other directors what they think about all this is futile. The board recently adopted rules that prohibit directors other than George Mitchell, the lead director, from talking to the press or even to institutional shareholders. One more sign that Eisner remains firmly in command: An executive compensation plan, newly adopted, gave him a $5 million bonus last year even though Disney's stock trailed the market

Not all the reforms have backfired. Several of Eisner's longtime cronies were forced off the board. Blatant conflicts of interest were eliminated. (Mitchell, the lead director, used to be a consultant for the company, and his law firm worked for Disney, which put him in Eisner's debt.) Most important, three newly appointed directors have solid credentials: Robert Matschullat, former vice chairman and CFO of Seagram; Aylwin Lewis, president of Yum Brands; and John Chen, chairman, CEO, and president of Sybase.

"I think the directors have made real progress," said Ira Millstein, a lawyer and governance expert who has advised Disney. "They're acting like a board should act." If that's so-only time will tell-Gold's decision to leave was a mistake. Had he stayed, he could have tried to win over the newcomers. For all the talk of a turnaround, Disney's operating income peaked in 1998 and was below 1996 levels last year. "He missed a huge opportunity," says a well-placed Disney insider. Finding support on Wall Street for an oust-Eisner campaign won't be easy, either, because the stock's up by 35% this year. If being on the inside was frustrating, being on the outside could prove even more so. - Marc Gunther