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The ISS Hewlett-Packard Decision; Another Form-Over-Substance Decision and Another Effort to Promote the Idea that the Principal Function of the Board is to Monitor the CEO

The decision by ISS, reported in its March 2, 2011 proxy advisory for the annual meeting of Hewlett-Packard, to recommend against the reelection of members of the nominating committee because of the participation of the Hewlett-Packard CEO in the search for new directors, reflects another mechanistic decision undermining the ability of a board to function collegially. Like many of the positions taken by ISS, it exalts the board's monitoring functions over its equally important strategic advisory functions.

There is nothing in the NYSE rules that limits or restricts the CEO, or any board member who is not a member of one of the independent committees, from making recommendations to the committee, either by attending a meeting of the committee or by discussion with individual members of the committee. In order to perform its functions as effectively as possible, a board, and its committees, must be collegial bodies. Rigid procedures designed to wall off communication among directors are the antithesis of good corporate governance.

The NYSE rule requiring an independent nominating/corporate governance committee specifically provides that the purpose of the committee is to select director nominees "consistent with the criteria approved by the board" and to "develop and recommend to the board a set of corporate governance guidelines." The "board" includes the CEO and all the other directors, independent and not independent. It would be a totally dysfunctional process if input and advice from the CEO was prohibited until after the committee meets and makes its decisions. There is nothing in the NYSE rule or "best practices" that warrants restricting the CEO from voicing advice or opinion until after the committee has acted.

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