ELLIG GROUP
Reimagining Search

DECEMBER 2, 2001 CHANGED BOARDS FOREVER

by Nicole Sandford
Global Board Services Leader at Ellig Group
Board Advisor and Independent Director

December 2, 2001. Twenty years ago. The day that Enron filed for bankruptcy. While it would be months — even years — before we truly understood the ripple effects of the Enron debacle, the company's bankruptcy most certainly marked the end of an era.

By this point in the year, 2001 had already been pretty eventful. We were still reeling from the 9/11 terrorist attacks when the scope and scale of Enron's corporate malfeasance unfolded over the fall and winter months. It was, in some respects, like watching an accident in slow motion. [**Sidenote**: If you haven't read *The Smartest Guys in the Room*, go ahead and order it now. I'll wait.]

The fallout was very much my day-to-day reality. In the spring of 2001, I was selected for Deloitte's prestigious national office leadership development program. My assignment was to assist the CEO of our audit practice in a detailed analysis of audit committee/auditor relationships.

Candidly, I didn't have a lot of competition for the role. The high-performing managers that were selected for the leadership development program preferred technical assignments that would clear a path to partnership when they returned to their practice offices. Many asked "What the heck will you do with that experience?". But when the CEO articulated his vision for "mining" best practices from our most experienced partners as a driver of improved audit quality, I was intrigued. I jumped in with both feet.

Several months later, it became clear that this assignment would not be a sleepy, academic exercise. As Enron unraveled, all hell broke loose. I became the primary resource for our partners as their audit committees pressed them to answer tough questions like *What happened at Enron? Could it happen here?* My career as a boardroom advisor and self-proclaimed governance geek had begun.

On this historically significant date in corporate history, I find myself reflecting on how things have changed for boards since those early days of the 21st century. How far have we really come? And what's left to do?

Two decades later, I still spend most of my days advising boards and executives on corporate governance and performance. On this historically significant date in corporate history, I find myself reflecting on how things have changed for boards since those early days of the 21st century. How far have we really come? And what's left to do?

One could argue that nothing has changed more than boardroom dynamics. The heightened expectations of investors and regulators, along with a shift to "stakeholder" capitalism, have completely transformed how boards interact with management and each other. I advised my first Fortune 100 board very shortly after the Enron bankruptcy, and it is difficult to describe the gatekeepers and processes that I had to navigate. Executives wanted every word scripted; every document previewed. Directors rarely, if ever, interacted with management outside of the meetings, and almost never without the CEO. Today's board would never tolerate the kind of "filtering" that was commonplace back then. For example, as chair of a public company audit committee in 2021, I routinely meet with the CFO between meetings. And I'm free to call any of my fellow directors at any time without clearing those conversations through the company. For this, we should all be grateful.

Here are my thoughts across three additional corporate governance dimensions: board composition, shareholder rights, and board committees:

continued →

BOARD COMPOSITION:

Then: Once upon a time, board seats were essentially lifetime appointments for CEOs, virtually all of whom were 60+ year old white men. CEOs routinely sat on each other's boards with no consideration of the impact of such interlocks on the director's ability to be impartial. In fact, board independence — in either fact or appearance — wasn't a priority at all until the very end of the 20th century.

Now: Boards are required to have a majority of independent directors. Many of the largest public companies are fully independent with the singular exception of the CEO. Mandatory retirement and other refreshment mechanisms are commonplace. Board interlocks — the favorite tool for "scratch my back and I'll scratch yours" capitalism — are a thing of the past.

What's left? While there can be no question that the complexion of American boards is very different today than it was in 2001, there can also be no question that there is much to do to level the playing field for women and underrepresented groups in the C-suite and, consequently, the boardroom.

Board refreshment is also still a pain point. While board seats are no longer lifetime appointments — and I haven't seen a director fall asleep in a board meeting in many years– tenure is still stubbornly long; turnover stubbornly low.

SHAREHOLDER RIGHTS:

Then: At the turn of the century, most boards were elected by plurality voting standards. Investors essentially had two options — vote "for" the company's nominees or withhold their votes. A company's nominees were often elected without the support of a majority of its investors. On the compensation front, the tactics and benchmarks used by boards in rewarding executives were…well, "opaque" is the nicest word I can think of. The alignment of executive pay with performance was rarely seriously debated outside of academic circles.

Now: Today, shareholder influence over the composition of the board and the compensation of executives is quite different. Plurality voting is a dinosaur — so much so, many of the people reading this may have never even heard of it. Transparency around compensation practices and shareholders' non-binding "Say on pay" votes were once the most controversial idea imaginable. Now, they are mostly uneventful for established companies that apply common sense and transparency.

Its always easy to focus on the work left to do, and certainly corporate governance feels more politicized than at any time in the recent past. But from where I sit, we have a lot to be proud of when it comes to the evolution of corporate boards since Enron first made us sit up and take notice. If the past is a predictor of the future, I'm curious to see what the next 20 years will bring.

What's left? I don't dare to wade into the waters of what's left to do in terms of shareholder rights. The answer — like beauty — is very much in the eye of the beholder. I do think, however, that the continued and growing acceptance of tiered share structures — particularly among tech sector "darlings" with enigmatic founder-CEOs — is likely to create interesting shareholder rights cases for many years to come.

BOARD COMMITTEES:

Then: Major exchanges required listed companies to have independent audit committees through standards implemented in the late 1990s. And most boards were so large — much larger than now — an executive committee was required to facilitate operations. In fact, the executive committee was the board in many cases.

Other than that, board committees were ad-hoc at best.

Now: Board committees have completely transformed the way boards execute their duties. Audit, compensation, and nominating/governance committees are required, and each has a growing set of duties and expectations. Audit committees now oversee risk, regulatory compliance, and many other key governance elements that have nothing to do with the financial statement audit. Compensation committees are taking on talent or DEI oversight in addition to their mandated oversight of executive compensation. And nom/gov committees are arguably the most powerful of all with the ability to shape and transform nearly every other element of board composition and function.

What's left? While board composition has seen significant evolution, committee leadership has farther to go. Women and underrepresented groups are far less likely to chair a committee than their white male counterparts.

* * *

Its always easy to focus on the work left to do, and certainly corporate governance feels more politicized than at any time in the recent past. But from where I sit, we have a lot to be proud of when it comes to the evolution of corporate boards since Enron first made us sit up and take notice. If the past is a predictor of the future, I'm curious to see what the next 20 years will bring.

About the Author