



## Push To Split Chairman, CEO Roles Gains Traction

By Evan Weinberger

Law360, New York (February 01, 2012, 2:13 PM ET) -- With one of the nation's largest labor unions recently filing proposals to split the role of chairman and CEO at a slew of big corporations, experts say growing pressure from such corners is likely to lead more prominent companies to have two independent voices at the top.

In mid-January, The American Federation of State, County and Municipal Employees, whose pension fund manages more than \$850 million in assets, filed shareholder proposals with the nine companies, including [JPMorgan Chase & Co.](#), [Goldman Sachs Group Inc.](#) and [Johnson & Johnson](#), in a bid to "increase corporate management's accountability and transparency and better align the interests of management with those of shareowners."

"Our independent chair proposals are designed to make these boards un beholden to an all-powerful CEO and chair and more accountable to their owners, the shareholders," said AFSCME President Gerald W. McEntee.

Within the next 10 years, nearly every major American corporation will likely split the two positions, but there will be growing pains, according to Lynne Turner, the former chief accountant at the U.S. [Securities and Exchange Commission](#) and a fierce corporate governance advocate.

"It'll be like Chinese water torture to get there," he said.

Corporate governance reform advocates have long pushed for splitting the role of CEO and chairman, saying it can greatly improve a company's performance both financially and operationally.

"There's a clear case to be made that separating the roles creates clarity of monitoring, and it makes it simpler to avoid conflicts of interests," said Julian McCarthy of management consulting firm Oliver Wyman. "A board can monitor, criticize and differ from a CEO, the argument goes, if the CEO isn't the leader of the board."

An independent chairman can set the agenda, potentially going through issues that a CEO might not want

to address, said Robert Jackson, an associate professor at the Columbia University School of Law.

“If the CEO's the chair, it might never make its way to the board,” he said.

**And with executive compensation becoming a hot topic among corporate governance advocates, having an independent board chairman can provide a check on salaries going out of control, said Amanda Brady, a director with executive search firm The Alexander Group.**

**“CEOs without any checks can manipulate earnings and trigger the bonuses that everyone's been complaining about the last few years,” she said.**

But splitting the roles is not necessarily a way to increase corporate accountability and performance, some critics of the push argue.

The board chairman's role is not to get into the weeds of a company's operation, but rather to deal solely with board issues and, when there is an independent chairman, provide a sounding board for the CEO, said Francis Byrd, a senior vice president with consulting firm Laurel Hill Advisory Group.

Having too many individuals at the top could actually lead to stalled decision making and unnecessary conflicts, he said.

“Given that the independent chair is not a boss of the CEO, I think that part may not be understood,” Byrd said.

Even with those concerns, U.S. companies are increasingly going to the independent director model.

According to Jackson, 80 percent of companies in the S&P 100 have independent board chairmen, up from about 10 percent in 2003, and about 40 percent of the S&P 500 have the structure.

The pressure to split began on the larger companies, and “the pressure is now just bleeding out,” he said.

Splitting the CEO and chairman's role has even been used as part of corporate governance reforms in securities settlements. In one example, Sunnyvale, Calif.-based [Applied Micro Circuits Corp.](#) agreed to split the roles as part of a \$60 million settlement of shareholder litigation in 2004, with other companies agreeing to similar terms in subsequent cases.

But the move to break up the chairman and CEO roles is hardly new, having gained steam in Europe especially in the wake of numerous corporate scandals, according to McCarthy.

In Britain alone, an estimated 95 percent of U.K. companies have independent board chairmen, McCarthy said.

After media mogul Robert Maxwell's November 1991 suicide and the subsequent scandals at his media empire, the British government convened a committee that ultimately recommended that companies split the CEO and chairman's role and explain to investors why they do not.

Several other European countries have similar policies, with Germany going so far as to mandate a split.

Even in the U.S., the push to split the role of CEO and board chairman began to take hold after the Enron and Worldcom scandals in 2000.

The 2007 and 2008 financial crisis, which came with accusations that corporate boards were not effectively monitoring financial companies, and the Occupy movement that started last fall has given a new life to the push, said Greg Robertson, the co-chair of Hunton & Williams LLP's global employment litigation and labor management relations practice.

"I think it sort of falls in line with that and is not unexpected," he said.

Indeed, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the major overhaul of financial regulations passed in 2010, has a provision similar to Britain's guidance on splitting the CEO and board chairman position.

That was dialed down from an earlier proposal from Sen. Charles Schumer, D-N.Y., who wanted a mandated split similar to German law.

But critics maintain that those who support a split at the top of a corporation are missing the point of the way corporations operate.

"To the degree that you have a CEO and a chairman that are different, you may wind up with a system where a chairman may get too involved in operations," Robertson said.

Corporate directors already vow to maintain their independence and act in the best interest of

shareholders, Byrd added. That makes the independent board chairman slightly less vital.

In the end, it doesn't matter what type of structure a corporation has if the board chairman and CEO do not act appropriately, Turner said.

“Ultimately, this is all about people. Very good structures with lousy people typically don't fix problems,” Turner said. “At the same time, very good people and lousy structures don't work either.”

--Editing by Lindsay Naylor.