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## Money and Business/Financial Desk **Can't Take It Anymore?** By GRETCHEN MORGENSON

PFIZER'S directors won re-election to the board pretty handily last Thursday when the company's shareholders met in Lincoln, Neb. But after all the votes were tallied, one could argue that the real winners in the election were all the investors who registered their dismay with the company's pay-for-failure compensation practices.

More than one-fifth of the shares cast at the Pfizer meeting opposed two members of Pfizer's compensation committee: Dana G. Mead, the chairman of the MIT Corporation, which oversees the Massachusetts Institute of Technology; and George A. Lorch, chairman emeritus of Armstrong Holdings, a maker of floor and ceiling materials. Opposition to Mr. Mead totaled 21.7 percent of shares cast; 21.3 percent of the shares withheld support from Mr. Lorch.

At last year's meeting, both men were opposed by less than 3 percent of the votes cast.

The resistance vote this year was not enough to cause any Pfizer directors to submit their resignations to the board; under the company's new rules, support of less than 50 percent is needed for that to occur. But shareholders interested in holding their directors accountable should be pleased with the Pfizer results.

Pfizer, after all, holds itself out as a paragon of corporate governance; that two of its directors received more than 20 percent opposition calls that stance into question.

Shareholders at Pfizer are upset by the \$65 million that the board has paid Hank A. McKinnell, the company's chief executive, since 2001; during that period, Pfizer's stock has cratered. An \$83 million pension promised to Mr. McKinnell when he retires in a few years adds insult to injury.

**Investors were urged to withhold support for Pfizer directors by two proxy advisory firms and by Investors for Director Accountability, a grass-roots organization led by Frederick E. Rowe Jr., president of Greenbrier Partners, a money management firm in Dallas.**

What lessons are to be drawn from the Pfizer case? If investors are unhappy with their companies' management, they should withhold votes for directors. Investors who throw away their proxies or fail to send them in are actually supporting management and have only themselves to blame if things go awry. Unless investors tell brokers how to vote their shares, the brokers will vote the shares in favor of the company's board.

A Pfizer official said the company did not have a tally of how many shares were voted by brokers at the election last week. But in 2005, that number was 1.4 billion shares, or about 20 percent of the stock outstanding. If the figure is the same this year and if half the shares had been voted against Mr. Mead and Mr. Lorch, stockholder opposition to the directors would have reached one-third of the vote.

Of course, Pfizer stockholders who did not provide instructions to their brokers may be happy with the company's performance. Pfizer's shares are up 8.6 percent so far this year, well above the 5 percent gain in the Standard & Poor's 500-stock index. Long-term holders, however, cannot be thrilled with the stock's performance. Since Mr. McKinnell took over at the company, the shares have fallen 46 percent.

It will certainly be interesting to see how big mutual funds voted the shares they hold for their clients. Especially intriguing will be the votes by institutions managing money for Pfizer in its pension and 401(k) plans, firms that receive handsome fees from Pfizer for the services. These institutions include Barclays Global Investors, Fidelity Management and Research, Northern Trust, J. P. Morgan Chase and Dodge & Cox funds. Data on these institutions' votes will not be available until late summer.

**If it turns out that these institutions voted for Pfizer's compensation committee members, Mr. Rowe said, they would have failed their most basic duty as fiduciaries: to vote shares in their clients' best interests. "If large investors were willing to show any leadership on corporate governance and executive compensation, people like us wouldn't be complaining," he said. "But they have been allowed to be conflicted out of taking that leadership role."**

Many funds report their votes on their Web sites, but voting records are also available from the Securities and Exchange Commission at [www.sec.gov/edgar/searchedgar/webusers.htm](http://www.sec.gov/edgar/searchedgar/webusers.htm).

Shareholders of funds whose management votes against their interests can report their displeasure by writing to the funds -- or they can sell their shares.

**Mr. Rowe said his organization has plans to force institutions to vote their shares in their clients' best interests. "If they're not prepared to take a leadership role," he said, "then we are going to seek legislative or regulatory actions to split the business of the financial**

**intermediaries so they can serve one customer or the other, but not both. If they have betrayed the interests of their individual investors in order to serve their corporate interests then some sort of civil action might be considered, too."**

The idea of breaking up financial giants is a quaint one these days. Glass-Steagall, the Depression-era law that broke up financial conglomerates after they were found to have put their own interests ahead of their customers', drew its last breath in the late 1990's. Then again, has anybody else noticed how many scandals based on conflicts of interest at big financial firms have surfaced since Glass-Steagall's demise?

Regulators, alas, have been hesitant to bring cases against investment companies for failing to exercise their fiduciary duties. It took New York's attorney general, Eliot Spitzer, to bring cases against mutual funds for allowing some big clients to conduct market-timing trades, harming other investors in the funds.

But the S.E.C. will have the chance in coming weeks to support investors in an important battle at CA Inc., the software company whose former chief executive Sanjay Kumar pleaded guilty to eight counts of securities fraud and obstruction of justice last week. How the S.E.C. rules on the CA skirmish will speak volumes about whose side the agency is on.

Cornish F. Hitchcock, outside counsel to Amalgamated Bank's LongView Funds, an investment trust, has submitted a proposal that would allow CA shareholders to remove two directors by a majority vote of shares outstanding at the company's 2006 annual meeting. Those directors are Alfonse M. D'Amato, the former senator from New York, and Lewis S. Ranieri, former vice chairman of Salomon Brothers. LongView said it was focusing on those directors because both were on hand when the company's accounting and governance practices were in question.

The company has yet not scheduled its annual meeting, but last year's took place in August.

CA says that both directors have helped turn around the company and that shareholders benefit from their services. Lawrence M. Egan Jr., director of corporate governance at CA, has written to the S.E.C., contending that LongView's proposal should be excluded from the proxy and therefore not put to a vote because it relates to directors already on the company's board and the S.E.C. has previously allowed exclusion of such proposals from other companies' proxies.

But the law in Delaware, where CA is incorporated, allows for the removal of directors by shareholder vote, Mr. Hitchcock said. Because CA does not allow its shareholders to call special elections to remove directors, submitting such a proposal is the only way to let shareholders have a say on the company's board.

"CA's arguments don't grapple with the basic governance issues here -- namely the right of

shareholders to remove directors," Mr. Hitchcock said. "If one believes in less government regulation and letting the market dictate results, the S.E.C. should step back and let shareholders decide these issues."

Certainly seems right. We'll see if the S.E.C., the agency known as the investor's advocate, agrees.

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GRAPHIC: Photo: Shareholders protested the compensation given to Hank McKinnell, Pfizer's chief executive. (Photo by Kent Sievers for The New York Times)(pg. 4)