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Introduction

F. Hodge O'Neal

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INTRODUCTION

F. HODGE O'NEAL*

The authors of the three articles in this symposium are indeed authoritative voices in the respective areas of corporation or securities law that they discuss. Not surprisingly they have produced three unusually interesting and useful articles. The authors and the Washington University Law Quarterly deserve congratulations.

The author of the first article, *Civil Liability Under the Federal Proxy Rules*, is William H. Painter, Albert E. Jenner, Jr. Professor of Law at the University of Illinois. He has long been a nationally recognized and highly respected writer in the fields of corporation law and securities regulation. He has authored numerous law journal articles and the following treatises: *Federal Regulation of Insider Trading*; *Corporate and Tax Aspects of Closely Held Corporations*, now in second edition; *Problems and Materials in Business Planning*, also in second edition; and *The Federal Securities Code and Corporate Disclosure*. He has served as Special Counsel and Director, U.S. House of Representatives Committee on Interstate and Foreign Commerce, Subcommittee on Commerce and Finance, Study of Securities Industry (1971-1972), and as Chairman of the Subcommittee on Legislation of the American Bar Association's Federal Securities Committee (1974-1981).

In his article for this symposium Professor Painter points out that courts continue to differ on some proxy regulation issues. He examines in detail four of those issues, namely, whether and to what extent the following elements are required for an action under the proxy rules: reliance, causation, materiality and scienter. His examination of judicial decisions and other authorities dealing with each of these elements is thorough, balanced and incisive. His writing is concise, clear, direct and extensively documented. The articles does a great deal to clarify areas of the law which in the past I have found very confusing.

The author of the second article in the symposium, *Insider Trading Regulation and the Production of Information: Theory and Evidence*, is James D. Cox, Professor of Law at Duke University. He is also a nationally respected teacher and author. In addition to many law journal arti-

* Dean Emeritus and George Alexander Madill Professor of Law, Washington University. A.B. 1938, J.D. 1940, Louisiana State University; J.S.D. 1949, Yale University; S.J.D. 1954, Harvard University.

cles, he has written treatises entitled *Financial Information, Accounting, and the Law* and *Sum and Substance of Corporations*, the latter now being in fourth edition.

In his article Professor Cox offers a “free market” explanation of (in his words) “the forces which stimulate the production of the most important form of forward-based information, the financial forecast.” The article (1) considers the social value of forecasts, (2) addresses the problem of assuring the authenticity of financial forecasts, (3) develops a theory of how the corporate interest can be served through a suggested compensation arrangement for managers which looks to market-based rewards, (4) points out surprising market-based support for the suggested managerial compensation arrangement, and (5) raises questions yet to be studied before fully embracing the proposed compensation arrangement. The article is an impressive mental effort that draws on Professor Cox’s comprehensive knowledge of market responses to various kinds of forecasts.

The author of the third article, *Representing Minority Shareholders in Close Corporations Under Modern Business Corporation Acts*, is Joseph E. Olson, Professor of Law at Hamline University. He has written extensively on close corporation problems and played a major role in obtaining enactment in Minnesota of pioneering legislation designed to protect minority shareholders in close corporations. In addition, he has the more dubious qualification of having been a student of mine over fifteen years ago when I was teaching at Duke Law School.

Professor Olson’s article examines the problems an attorney encounters in representing a minority shareholder in a jurisdiction which has a corporation statute based on the Model Business Corporation Act. Professor Olson contrasts the greater ease of minority representation under Minnesota legislation, which differs dramatically from the Model Act in its treatment of important close corporation issues. He discusses in detail planning devices that are permissible under the Model Act, including shareholders’ agreements and a comprehensive list of special provisions that may be included in a corporation’s articles of incorporation and bylaws. A major contribution of the article is the most comprehensive discussion yet published of the ethical issues an attorney encounters in representing all the participants or a group of minority participants in the organization of a close corporation.

I enthusiastically recommend the articles in this issue to practicing attorneys, legislators and legal scholars. They are well worth a careful reading.