

Directors' secret windfalls

Stephen Mayne takes aim at director's hidden transactions and cosy relationships with CEOs, demands fair company elections and shines a light on Australia's investment banking practices.

If you believe "sunlight is the best disinfectant", then the more from listed Australian companies the better.

However, Australia's related party transaction disclosures are nothing short of a joke, and getting worse.

How could Coles Myer have omitted to disclose the \$100 million a year worth of goods it buys from Southcorp, given Rick Allert was deputy chairman of the retailer and chairman of its giant liquor supplier?

At News Corp, outgoing

1999-2000 accounts disclosed payments totalling \$6 million.

However, there is no mention of any dealings in 2000-01 or 2001-02, even though the sale of Fox Family to Disney generated \$65 million for Allen & Co because it owned 1 per cent of the company.

News Corp's general counsel Arthur Siskind argued at the recent AGM this did not constitute a related party transaction, although shareholders would presumably like to know the company's decision to sell generated \$65 million for the investment banking firm of the audit committee's chairman.

Another example is Southern Cross Broadcasting. For several years it disclosed fees paid to lawyers Corrs Chambers Westgarth because SCB founder, chairman and top 20

shareholder John Dahlsen is a former partner and ongoing consultant to Corrs.

But when crikey.com.au complained about the non-disclosure, SCB's general counsel, Adam Olding, wrote back as follows:

"The fact that John Dahlsen is an employee of Corrs (by virtue of his consultancy with them) does not mean that any legal fees we incur with Corrs require disclosure under any provision of the Corporations Act, the accounting standards or otherwise."

If so, Australia needs reforms to the Corporations Law, the accounting standards and the ASX disclosure provisions as companies are arguing clear related party transactions do not have to be disclosed.

TIME FOR COMPANIES TO CATEGORISE DIRECTORS

One reform needed in Australia is for companies to categorise their directors so investors know where they are coming from.

The only thing usually disclosed is whether a director is an executive or a non-executive and while related party transaction disclosure is meant to tell shareholders which directors have third party relationships with the company, these relate only to the previous financial year and are often ignored.

For example, Solomon Lew claims every Coles Myer director except Mark Leibler has related

party transactions with the retailing giant but only his are actually disclosed.

Every year the annual report should explain the composition of the board in terms of the following categories: executive director; retired executive; current or past service provider; independent non-executive, and shareholder representative.

Anyone claiming to be independent should also spell out the nature of any relationships with shareholders, the CEO or the chairman.

As a result, Westfield Holdings would have to admit none of their directors are truly independent. Rob Ferguson, through his role as the former managing director of BT, had many commercial dealings with Westfield. Fred Hilmer and David Gonski have provided consulting and investment banking advice over many years, Dean Wills was chairman of National Mutual which had large property investments with Westfield and Carla Zampatti has stores in Westfield shopping centres.

If Westfield was forced to disclose none of its directors were technically independent, it might spark investors to appoint people

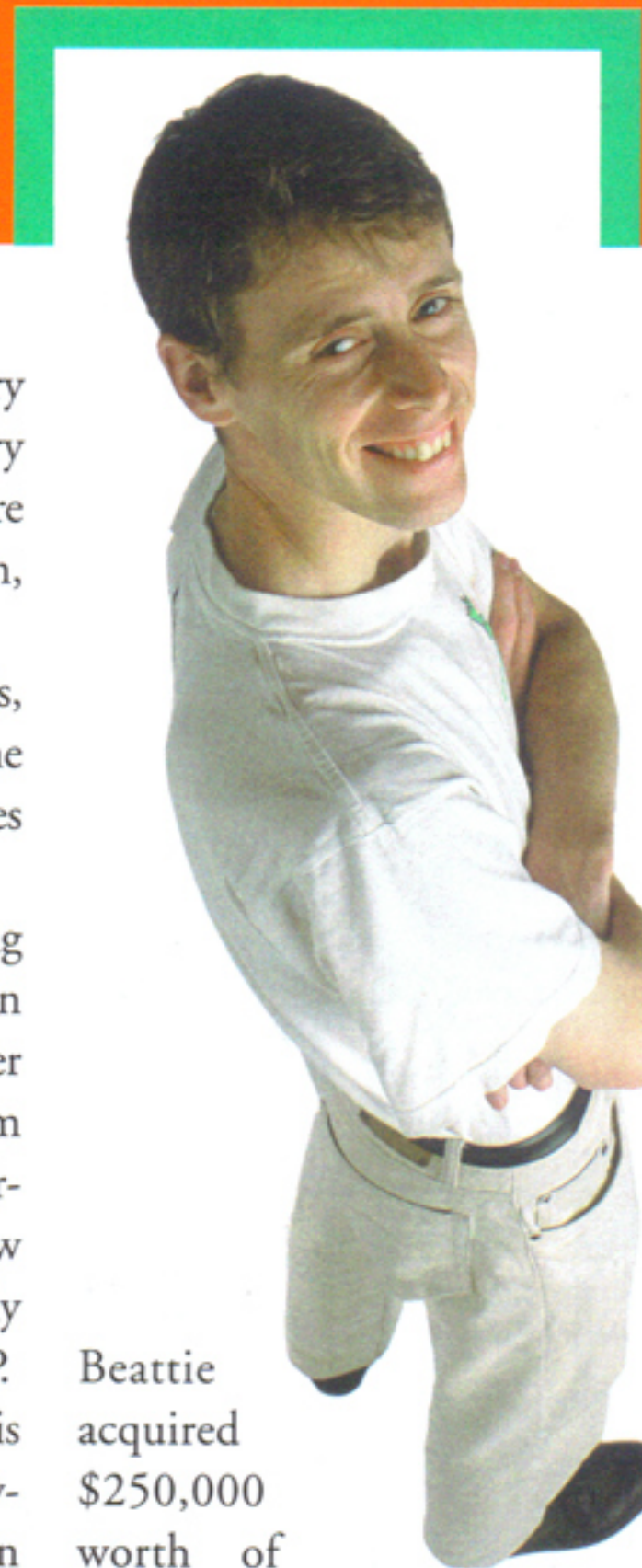
"I would prefer to see more lawyers, accountants and stockbrokers chairing companies rather than retired executives dominating the ranks of Australia's chairmen."

chairman of its audit committee Stanley Schuman has been a longstanding investment banking adviser to the company.

The 1998-99 annual report revealed Schuman's advisory firm Allen & Company received \$4 million from News Corp and the

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who could genuinely represent the 70 per cent of the company not owned by the Lowy family.

UNRULY COMPANY ELECTIONS

The battle for control of Coles Myer has finally put the spotlight on corporate elections.

Unlike politics, where specific rules and independent electoral commissions govern ballots, corporate elections are conducted by privately owned share registries and auditors hand-picked by the boards.

I have contested 16 elections for the following companies: ASX (2000, 2001 and 2002), Axa, Commonwealth Bank, David Jones, John Fairfax, National Australia Bank, News Corp, NRMA, Spotless, Telstra (2000 and 2001), West Australian Newspapers, Westfield Holdings and Woolworths.

NRMA and the Commonwealth Bank refused to include my concerns about their involvement with "cash for comment" in the notice of meeting, while Westfield excised all my concerns and only published a brief CV.

News Corp even refused to publish my age, let alone details of why I was standing.

Some companies got on the front foot: Spotless pointed out I'd failed in every attempt to get on a board and News Corp and the NRMA recommended against voting for me.

The usual trick is to declare there is no vacancy and move straight to a poll to avoid the

embarrassment of an outsider being elected from the floor. So far, only Woolworths, Spotless and News Corp have permitted floor votes.

Declaring there is no vacancy is the biggest rort going around because most company boards are well below the maximum numbers allowed in their constitution.

Board contestants should also be provided with a copy of the share registry on disk at no cost. This is what happened when I ran for the Victorian seat of Burwood in 1999 but the most I've managed to extract free of charge from a listed company was the names and addresses of the top 100 ASX shareholders.

WHERE DO COMPANY CHAIRS COME FROM?

Retired CEOs seem to be the dominant breeding ground for chairmen these days, with the likes of Stan Wallis, Ian Burgess, Geoff Tomlinson, Graeme Kraeche and Don Argus obvious examples.

Gone are the days when luminaries from the professions, especially the law, rose to chair major companies. People like Bill Irvine at NAB, John Dahlsen at Woolworths and Richard Searby at News Corp were lawyers who chaired top 10 companies and while the odd professional such as accountant Rick Allert is chairing a major company like Southcorp, they are increasingly rare.

But the concept of having CEO's as chairmen is also on the way out. So if executive chairmen

such as Rupert Murdoch, Gerry Harvey, Frank Lowy and Kerry Stokes are becoming rarer, as are lawyer and accountant chairmen, who is filling the void?

Other than retired CEOs, executives who failed to become CEOs are reinventing themselves as chairmen.

Jerry Ellis went from being CEO of BHP's minerals division into the chairman's job. Peter Willcox quit as BHP Petroleum chief, was slated to become chairman of Lend Lease and is now being talked about as the likely successor to Stan Wallis at AMP.

However, the best example is Mark Rayner who, after receiving a \$1.8 million termination payout as an executive director of CRA in 1996, leapt through the ranks to become chairman of NAB, Mayne and Pasmenco.

I would prefer to see more lawyers, accountants and stockbrokers chairing companies rather than retired executives dominating the ranks of Australia's chairmen.

GETTING IPO SHARES THE AUSTRALIAN WAY

American regulators are throwing the book at conflicted analysts and investment banks for giving CEOs preferential share allocations in hot floats in return for investment banking work.

Yet no one appears interested in whether the same practices happen in Australia.

Macquarie Bank's Transurban float in March 1996 comes to mind.

Victoria Racing Club (VRC) chief executive Brian

Beattie acquired \$250,000 worth of shares, which if still held are now worth \$1 million. It is a matter of record that Macquarie had advised the Victorian racing industry on various matters.

Transurban shares worth \$50,000 were also allocated to then TNT CEO David Mortimer. Seven months later Dutch company KPN unveiled a \$2 billion takeover and Macquarie Bank made more than \$5 million advising TNT. We will never know whether Mortimer's Transurban allocation helped win Macquarie the TNT mandate.

In Australia, stockbrokers such as JBWere and Merrill Lynch have a firm policy that staff are not allocated shares in floats. But more than a dozen Macquarie executives invested heavily in Transurban and shared in profits exceeding \$10 million. ♣