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Up, Up and Away: Explaining Why CEO Pay Soars.

Elon Musk's \$1 Trillion Pay Package and How We Got Here

By Bartlett Naylor

On Nov. 6, 2025, Tesla shareholders approved a record shattering compensation package for CEO Elon Musk valued at \$1 trillion. They approved this despite a poll showing average Americans opposed this gargantuan sum by a two-to-one margin;¹ despite recommendations of a “no” vote by the nation’s largest proxy advisory firms;² and despite Musk’s recent public displays of idiosyncratic behavior, as described in part one of this analysis.³

Musk’s \$1 trillion package did not emerge from sheer madness; in fact, CEO pay has soared dramatically in the last half-century, culminating in this new \$1 trillion frontier. This trend of soaring CEO compensation and, in particular, Tesla’s off the rails package for Musk, however, is completely out-of-sync with investor and public sentiment. Why? Did CEOs work less hard back in the 1960s even though American industry led the world in automobile production, pharmaceutical development, technology, and more? Have CEOs become much more valuable relative to the line workers who design and manufacture automobiles, or the software engineers who produce technological breakthroughs? Is their performance better?

¹ Jarice Thompson, *Press Release: New Poll Reveals the General Public Opposes Elon Musk \$1 Trillion Tesla Pay Package*, AMERICANS FOR FINANCIAL REFORM (Nov. 5, 2025), <https://citizen.short.gy/4ypmcb>.

² Thibault Spirlet, *A second major proxy firm told investors to reject Elon Musk's \$1 trillion Tesla pay deal*, BUSINESS INSIDER (Oct. 21, 2025), <https://citizen.short.gy/MK05LQ>.

³ Bartlett Naylor, *Musk's Unfathomable \$1 Trillion Payday, Explained*, PUBLIC CITIZEN (Nov. 5, 2025), <https://citizen.short.gy/dCwhlJ>.

Evidence shows that pay has little connection to performance or to the efforts of the CEO.⁴ Harvard Law School Professors Lucian Bebchuk and Jesse Fried documented this disconnection two decades ago in their 2005 book *Pay Without Performance*.⁵

"In all but a few glaring instances, executive pay is ... not linked to how the company is doing," explained Ira Weinberg, Washington-based practice director for executive compensation at Hay Management Consultants. "There is rarely an offsetting decrease in compensation when earnings fall."⁶

Nor do the senior executives seem to be working harder than their peers of a half-century ago. For example, Elon Musk has spent considerable time away from Tesla, running SpaceX and more recently, Twitter/X, followed by the Department of Government Efficiency (DOGE).

Public Citizen explored the dysfunctions behind the disconnection between CEO pay and CEO performance. We find these factors at play:

- Captured boards, a fatal problem since they determine CEO pay;
- Conflicted institutional voters who do not vote in their investor/clients' interests;
- Lax state laws that protect corporate management at the expense of the public;
- The rise of share price as the sole measure of corporate success;
- Conflicted CEO pay consultants;
- Falling individual tax rates; and
- The rise of buybacks as a common share price manipulation tactic.

⁴ Between 2015 and her final edition in 2023, As You Sow researcher Rosanna Landis Weaver documented what she identified as the 100 most overpaid CEOs each year. She identified this group by using regression analysis comparing what they should be paid, based on total shareholder returns (dividends plus share price appreciation), and what they are paid. For example, in 2022, the Paycom CEO who received \$211 million ran into shareholder opposition, who voted "no" in a non-binding vote at the annual meeting. Rosanna Landis Weaver, *100 Most Overpaid CEOs, 2022, AS YOU SOW* (2022), <https://citizen.short.gy/C6Sxpc>.

⁵ Lucian Bebchuk and Jesse Fried, *Pay without Performance*, HARVARD UNIVERSITY (Feb. 2004), <https://citizen.short.gy/0tHDnK>.

⁶ Mark Potts, *Survey: Some Disparity Between Executive Pay and Performance*, WASHINGTON POST (June 29, 2002), <https://citizen.short.gy/zLj3ad>.

Governance Conflicts

The example of Tesla highlights what pay critics have long observed, namely, that the governance machinery that determines CEO pay is broken.

The individuals who determine a CEO's pay are directors of the corporation's board. The board is elected by shareholders and, according to fiduciary law, reports to shareholders. They should hold the CEO accountable for major decisions and set his pay.

But the reality is that many board members are either docile or essentially captured. A full 35 percent of board members are or were themselves CEOs of other companies.⁷ It's in their interest to increase CEO pay generally, a good example for their own board members, who would be motivated to match that level of pay. It's also not in their interest to rock the boat, a bad example for their own board members. Should they object to high pay where they oversee a CEO, their own board members may object to theirs. Another 14 percent of board directors are insiders, managers of the firm, that is, subordinates of the CEO. They are certainly not a group well motivated to challenge their boss or reduce CEO pay.⁸

Board members don't face a standard political election where there might be two or three candidates for a single board slot, and there is no venue to campaign on a platform of reining in compensation expense or otherwise putting shareholders first. In all but rare cases (such as when a large, activist shareholder attempts to force major change at a company and sponsors a dissident candidate), there is one candidate for each board slot.

These candidates are recruited by the board, not volunteers who express interest, perhaps because they are concerned with runaway CEO pay. The board uses company resources (hired headhunters) to identify the candidate. It seems unlikely a company-hired headhunter would intentionally recruit someone bent on reversing the course that the incumbent board members have set on escalating CEO pay. Most headhunters have themselves typically come from careers where they've advanced high in their respective fields, a sign of thriving within establishment norms.⁹

Once on the board, the incentive to remain there and not rock the board is palpable. The pay for directors is generous, averaging \$336,352, according to the 2025 Spencer Stuart annual "Board Index" report.¹⁰ For this sum, the obligations are not extensive. The average corporate board met 7.1 times in 2024.¹¹ If the meeting lasts all day, that's

⁷ 2025 U.S. Spencer Stuart Board Index, SPENCER STUART, (2025), <https://www.spencerstuart.com/-/media/2025/10/ssbi2025/2025-us-board-index.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

\$47,373 a meeting, half the median annual income for an entire American household.¹² The maximum work, including non-meeting conversations and research is no more than 250 hours a year, or six weeks, according to a PWC survey.¹³ That's \$1,264 an hour. For many, that may be compensation worth being quiet in a board meeting to keep, especially on such a sensitive issue as how much the CEO makes. Tesla board members, as noted in the [first part in this series](#), receive millions.

According to Harvard Law School Prof. Lucian Bebchuk, a leading executive compensation scholar,

“CEOs and their management teams have considerable influence over boards. Directors have both financial and nonfinancial incentives to favor executives. Social and psychological factors tend to reinforce these incentives. The cost to directors of pay arrangements that hurt shareholders is low, and directors therefore have little economic incentive to resist a CEO’s compensation demands. Directors also devote too little time to their board positions to perform effectively the role of informed arm’s length bargainers.”¹⁴

Opined Robert Monks, considered one of the deans of corporate governance and co-founder with Nell Minow of Institutional Shareholder Services, a proxy advisory firm, “You have a situation in which, essentially, people pay themselves.”¹⁵

Graef Crystal, the leading compensation consultant who had negotiated the record-setting pay plan for Michael Eisner at Disney, then subsequently became a leading, acerbic critic, concluded that it’s rigged game. “When the company’s stock goes up, the chief executive views himself as a hero. And when it goes down, politicians are blamed, “it’s Janet Yellen’s or Barack Obama’s fault,” said Crystal.¹⁶

Crystal penned a 1991 book documenting the ways boards indulged CEOs, titled *In Search of Excess: The Overcompensation of American Executives*.¹⁷¹⁸ In Crystal’s view,

¹² Jessica Semega, *Income in the United States: 2021* CENSUS BUREAU (Sept. 13, 2022), <https://citizen.short.gy/AEhaLT>.

¹³ Charting the course through a changing governance landscape, PwC (2022), <https://citizen.short.gy/Cp4IZI>.

¹⁴ Lucian Bebchuk and Jesse Fried, *Pay without Performance*, HARVARD UNIVERSITY (Feb. 2004), <http://www.law.harvard.edu/faculty/bebchuk/pdfs/Performance-Part2.pdf>.

¹⁵ Kathleen Day, *Shareholder Crusaders Monks And Minow Speak Out*, USA TODAY (Oct. 19, 2014), <https://citizen.short.gy/YX2qtq>.

¹⁶ Joe Nocera, *C.E.O. Pay Goes Up, Up and Away!*, NEW YORK TIMES, (April 14, 2014), <https://citizen.short.gy/WKYczB>.

¹⁷ Graef Crystal, *In Search of Excess*, WW NORTON & Co. (1991), <https://citizen.short.gy/352cnN>. Crystal played on the name of a best seller, “In Search of Excellence,” a 1982 book that generally lauded American CEO Tom Peters, *In Search of Excellence*, HARPER BUSINESS (1982), <https://citizen.short.gy/zh2IKS>¹⁹ Andrew Brownstein, *Who Should Set CEO Pay? The Press? Congress? Shareholders?* HARVARD BUSINESS REVIEW, (May 1992), <https://citizen.short.gy/t6eOWO>.

“Executive compensation, American-style, is the ultimate insider’s game: everyone involved wins—except the shareholders.” Crystal claims that the CEO appoints his or her friends to the board, caters to them, keeps them happy, pays them handsomely, and expects to have the favor returned when it’s time for the board to ratify a compensation plan. The CEO hires high-priced compensation consultants, who report that the market for executive talent requires the board to deliver yet another tidy fortune to the CEO. Since these compensation consultants define what the market for executive talent is or is not, this finding is good news for CEOs everywhere—and for the consultants who line their own pockets by telling CEOs exactly what they want to hear.¹⁹

Concluded the pithy Crystal, “How are pay levels negotiated at American companies? The bargaining is done essentially by the chief executive officer, standing in front of the shaving mirror.”²⁰

Some directors’ pay packages are so outrageous as to prompt lawsuits, such as the Musk case, mentioned [in our previous report](#). But courts have rarely voided compensation. It does happen in rare occasions, though. The directors of Tesla, who previously awarded CEO Elon Musk \$2.6 billion in stock options, awarded themselves more than \$735 million.²¹ That’s money they ultimately agreed to return after a lawsuit by Tesla shareholders.²²

In addition to conflicted board directors, shareholders with concerns about CEO pay face roadblocks. Investors are allowed to vote up or down on executive compensation packages, known as “say on pay.” This was one of the reforms of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. However, this vote is non-binding. Boards need not re-write the compensation contract after a disapproval vote from shareholders. Some boards do reduce pay after a sizeable “no” vote. But the frequency of a majority “no” vote is relatively low—sometimes fewer than 10 companies per year suffer such a setback. The record number of majority “no” votes was set in 2020 at 16.²³

One reason for this, even in the face of the glaring problem of escalating CEO pay and its disconnection with performance, is the dominance of large institutional investors, namely mutual funds, in corporate share ownership. Only 25 percent of a typical company’s stock is held by individual investors; the balance is owned – and voted on – by these

¹⁹ Andrew Brownstein, *Who Should Set CEO Pay? The Press? Congress? Shareholders?* HARVARD BUSINESS REVIEW, (May 1992), <https://citizen.short.gy/t6eOWO>.

²⁰ Robert McCartney, *Quoth the Maven, Cut Some More*, WASHINGTON POST, (Jan. 29, 1992), <https://citizen.short.gy/PpoEaC>.

²¹ *Tesla Directors Agree to Return Excessive Stock Grants*, VALUEEDGE, (July 18, 2023), <https://citizen.short.gy/Ol8QXR>.

²² *Settlement Approved in “Other” Tesla Litigation*, COMPENSATION STANDARDS (Feb. 5, 2025), <https://citizen.short.gy/WkrQ8S>.

²³ Rosanna Landis Weaver, *100 Most Overpaid CEOs, 2022*, AS YOU SOW (2022), <https://citizen.short.gy/C6Sxpc>.

institutions.²⁴ Mutual funds such as Blackrock, Fidelity and Vanguard ostensibly own stock for the benefit of their investing clients, but they have no obligation to ask how their investing clients might vote on any issues before the annual meeting, including CEO pay packages.

What's more, and most importantly, mutual funds are hamstrung by a conflict of interest: in addition to serving individual investors, mutual fund companies may also serve as advisors to corporate-sponsored pension funds.²⁵

Researcher R. Christopher Small explained,

“Mutual funds have a fiduciary responsibility to act in the interests of their shareholders. Shareholder proposals provide one mechanism via which mutual funds can influence firm policies to benefit shareholders. However, mutual funds benefit when they receive pension fund business from firms, which creates a potential conflict of interest that creates an incentive for fund managers to support firm management and to vote against shareholder proposals.”²⁶

Asserted researcher Ying Duan,

“Corporate pension plans frequently employ [mutual funds] as trustees or other service providers. The trustee relationship brings large capital inflows to family funds, creating motives to attract and maintain pension clients and compromising the funds' role in corporate governance, because they are tempted to please rather than discipline management in order to maximize assets under management (rather than portfolio performance). This can apply even if the [mutual fund] is not currently tied to the firm – the potential of securing lucrative pension businesses can be strong enough a motive. In proxy voting, conflicted [mutual funds] are expected to support management and/or oppose activist shareholders more than other mutual funds.”²⁷

Yet another study found “business ties with portfolio firms influence mutual funds' proxy voting.”²⁸

²⁴ Bob Byran, *Here's Who Actually Owns The Stock Market*, BUSINESS INSIDER (May 25, 2016), <https://citizen.short.gy/njlz8b>.

²⁵ Ying Duan, *Conflict Of Interest And Proxy Voting By Institutional Investors*, SCIENCE DIRECT (Oct. 2021), <https://citizen.short.gy/afilVg>.

²⁶ R. Christopher Small, *Do Pension-Related Business Ties Influence Mutual Fund Proxy Voting?* HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (March 28, 2011), <https://citizen.short.gy/CvNaJl>.

²⁷ Ying Duan, *Conflict Of Interest and Proxy Voting by Institutional Investors*, SCIENCE DIRECT (Oct. 2021), <https://citizen.short.gy/afilVg>.

²⁸ Dragana Cvijanovic, *Ties that Bind: How Business Connections Affect Mutual Fund Activism*, JOURNAL OF FINANCE (April 14, 2016), <https://citizen.short.gy/t1Kc3k>.

Meanwhile, those individual investors who believe the CEO is truly pillaging a company will rationally sell the stock altogether. That eliminates their ability to vote against outsized pay packages.

State Laws

The fact that states, not the federal government, determine corporate rules further debases rational governance. Even though the modern, large corporation operates across state borders, and often internationally, states regulate their governance. Most large companies incorporate in Delaware, known for its corporate-friendly laws, as well as its robust and experienced court system. This created a race to the bottom effect where states that might consider improving corporate governance risk losing incorporations, and the associated fees. Delaware earns so much from its incorporation fees that it maintains low personal income tax rates and charges [no sales tax](#). In 2024, for example, the state took in \$2 billion from incorporation fees, about a third of all tax revenue.²⁹ By contrast, New York, where many of these same Delaware-incorporated companies maintain their physical headquarters, incorporation fees make up 0.0003 percent of total state tax revenue.³⁰

Musk's \$1 trillion paycheck came after Musk chose not to surrender to the Delaware courts. After the Delaware judge invalidated his Tesla pay package – calling it “an unfathomable sum,”³¹ – Musk derided her and Delaware corporate law. While Delaware built a reputation for pro-corporate laws, Musk has moved the goal posts in the race to the bottom. He then led reincorporation of Tesla and SpaceX in Texas.³²

That exodus sent tremors through states. Presumably to prevent the next Tesla from abandoning incorporation in their respective states, Delaware, Texas, and Nevada changed their corporate laws to make them more favorable to corporate insiders and less favorable to retirement savers and other investors who want to protect their investments.

Delaware also changed its laws to make it easier for corporate insiders to escape scrutiny for conflicted transactions (when corporate insiders are on both sides of the transaction) that may harm regular shareholders by, among other changes, creating a generous safe harbor for conflicted transactions, redefining what it means to be an independent director and controlling shareholder, and limiting what documents shareholders can request from

²⁹ Jacob Owens, *Delaware Explained: State Revenue*, SPOTLIGHT DELAWARE (May 28, 2025), <https://citizen.short.gy/tvmXx1>.

³⁰ *New York's current budget*, THE URBAN INSTITUTE (Dec. 2025), <https://citizen.short.gy/phh6qD>.

³¹ Tom Hals, *Judge voids Elon Musk's 'Unfathomable' \$56 billion Tesla pay package*, REUTERS (Jan. 31, 2024), <https://citizen.short.gy/IYQeKH>.

³² Mariko Oi, *Elon Musk Says SpaceX's Legal Home Moved From Delaware To Texas*, (Feb. 5, 2024) BBC, <https://www.bbc.com/news/business-68302228>

corporations.³³ Even though Musk's companies were no longer incorporated in the state, Delaware Governor Matt Meyer said that he wanted the state to "get it right for Elon Musk."³⁴ Many institutional investors opposed the bill,³⁵ while the private equity industry and lawyers representing corporate insiders lobbied for it.³⁶ Delaware's reaction to Musk's departure represented nothing particularly novel; states have long "raced to the bottom" to attract incorporations. The year before the Musk contest, for example, Delaware passed a law that gave venture capital and other large, early investors rights that allow them to second guess and effectively control boards of directors.³⁷

Texas approved three laws following the Musk pay decision undermining the rights of minority shareholders and insulating corporate insiders from accountability: one allowing corporations to amend their bylaws to require a 3 percent ownership threshold to bring shareholder derivative lawsuits; another allowing corporations to amend their bylaws to require a 3 percent or \$1 million ownership threshold to file shareholder proposals; and a third requiring proxy advisors to declare they incorporated "nonfinancial factors" and "subordinated the financial interest of shareholders" if they take into account environmental, social, and/or governance factors when making recommendations to clients to cast votes against the recommendations of corporate management.³⁸

Nevada also joined the race to the bottom of state corporate law. Andreessen Horowitz, a prominent venture capital firm and major cryptocurrency investor, announced it was leaving Delaware for Nevada and encouraged tech startups to do the same.³⁹ Andreessen-associated authors penned an article encouraging the move pointed to a lax standard of review of corporate decision-making enshrined in Nevada statute, broad protection of executives and boards from liability, and a significant ownership threshold for shareholders to be able to request certain documents from the company as reasons for incorporating in Nevada instead of Delaware. These reasons add up to one main reason: more power for corporate insiders and less power for regular shareholders to

³³ Michelle J. Annunziata, et. al, *Delaware Changes Its Corporate Law: What Litigators and Clients Need to Know about Senate Bill 21*, MAYER | BROWN (April 3, 2025), <https://citizen.short.gy/i5yhQb>.

³⁴ Katie Balevic, Delaware governor tells BI things may 'need to change' as companies threaten to leave the state, BUSINESS INSIDER (Feb. 2, 2025), <https://citizen.short.gy/U1R0a4>.

³⁵ *International Union of Operating Engineers of Eastern Pennsylvania and Delaware et al. Public Investor Letter in Opposition to Delaware Senate Bill 21*, (March 7, 2025), <https://citizen.short.gy/YfJdnN>. Jen Sisson, *International Corporate Governance Network. Amendments to Delaware General Corporate Law (Senate Bill 21)*, (March 11, 2025), <https://citizen.short.gy/t5LYbj>. Jeff Mahoney, Council of Institutional Investors. Letter on Delaware Senate Bill 21, (March 12, 2025), <https://citizen.short.gy/aZIOwB>.

³⁶ Sabrina Willmer, *Musk's War on Delaware Spurs Law Pushed by Private Equity*, BLOOMBERG LAW (March 26, 2025), <https://citizen.short.gy/GtMNeM>.

³⁷ Senate Bill 313. 152nd General Assembly (2023 - 2024), <https://legis.delaware.gov/BillDetail/141480>.

³⁸ Niko Gallogly, *New Texas Laws Open a Wild West for Corporate Governance*, NEW YORK TIMES (Aug. 16, 2025), <https://citizen.short.gy/zhCR5b>.

³⁹ Jai Ramaswamy, Andy Hill, and Kevin McKinley, *We're Leaving Delaware, And We Think You Should Consider Leaving Too*, ANDREESSEN HOROWITZ (July 9, 2025), <https://citizen.short.gy/kDsaz0>.

serve as a check on decisions that affect their investments, even when they harm beneficiaries and constituents.

Recent Federal Changes

At the federal level, Trump appointees are working to limit the rights of regular shareholders to hold corporate insiders accountable. Early in 2025, the Securities and Exchange Commission (SEC) changed its policy to make it easier for companies to exclude shareholder proposals from their proxy statements.⁴⁰ The agency also greenlit public companies to include a mandatory arbitration clause in their governance documents.⁴¹ Mandatory arbitration requires a harmed shareholder to use secretive, corporate-biased arbitration and bars them from suing in court. The agency also weakened its own ability to police financial markets by prohibiting its Enforcement Division from launching investigations without a Commission vote approving them.⁴² Meanwhile, the U.S. House of Representatives advanced a package of bills that it passed last Congress that would further weaken shareholder rights and undermine the ability of the SEC to mandate companies to disclose information that would allow investors to make more informed decisions.⁴³

In sum, CEO pay is soaring because there is no mechanism to stop it; in fact, current governance conflicts seem to promote pay escalation.

Shareholder Primacy

Several new factors add to the acceleration of rises in compensation. Former CEO Steven Clifford and veteran Wall Street observer Nicholas Lehmann in their respective books argue that CEOs' focus on priorities changed in the 1980s. This change followed persuasive academic publications by an influential business school professor extolling shareholder primacy. That is, all that matters is the price of a company's stock.

In his book, "The CEO Pay Machine," former broadcast industry executive Clifford points to a 1976 series of articles by Rochester University Professor Michael Jensen called "Theory of the Firm." In short, Jensen called for using share price as the sole, determining factor in setting CEO pay. "When I was in business school from 1966 to 1968," recounts

⁴⁰ See Caroline Crenshaw, *Statement on Staff Legal Bulletin 14M*, U.S. SECURITIES AND EXCHANGE COMMISSION (Feb. 12, 2025), <https://citizen.short.gy/DdAbLA>.

⁴¹ Declan Harty, *SEC grants corporate America new power in shareholder fights*, Politico (Sept.17, 2025), <https://citizen.short.gy/38qTJp>.

⁴² *US SEC revokes staff's authority to launch formal probes, notice says*, REUTERS (March 11, 2025), <https://citizen.short.gy/qK6aCH>.

⁴³ *Re: Full Committee September 10th Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value Hearing*, AMERICANS FOR FINANCIAL REFORM EDUCATION FUND, (Sept. 8, 2025), <https://citizen.short.gy/mUJL1S>.

Clifford, “we studied cases that illustrated that good citizenship was usually good business.” Affirming this view, in 1981, the Business Roundtable, which is composed of the CEOs of the largest businesses, issued a statement that management must balance the interest of various stakeholders, that included customers, employees, and the community, along with shareholders.⁴⁴

It was about this time that Jensen, who ironically later became a critic of private equity, became prominent.⁴⁵ Lehmann in his book “Transaction Man,” recounts how Michael Jensen argued that corporations were not efficient, profit-maximizing machines, but inefficient bureaucracies “whose chief executives ensured corporate boards were stuffed with their cronies, and ruled their fiefdoms based on friendships, whims, and on ‘the attractiveness of the office staff,’” summarized Lehmann.⁴⁶ Jensen became the most outspoken figure in the shareholder primacy movement, extolling the singular focus on stock prices.^{47, 48}

Jensen’s major contribution to scholarly understanding of business management was what he termed the “principal-agent problem.” Put most simply, managers weren’t accountable to owners. Owners, in this case, were the shareholders, the principals. The managers were the executives, including the CEO, and the agents of the principal/shareholders. Insulated from true shareholder/principal suffrage, CEOs could be lazy and overpaid.⁴⁹

While this concept of lazy, overpaid managers unresponsive to shareholder interest might not seem to be a revolutionary concept or worthy of popular attention, Jensen’s scholarship became convenient to, and thereafter amplified by, a Wall Street operator relatively new to the American corporate landscape in the 1980s: private equity (as it is now called). These new financial operators were derided in the 1980s as corporate

⁴⁴Thomas Hemphill, *The Business Roundtable and ‘Stakeholder Capitalism’ — a Retrospective*, INSIDE SOURCES

(Sept. 3, 2020), <https://citizen.short.gy/rNEhpN>.

⁴⁵ Steven Clifford, *The CEO Pay Machine*, RANDOM HOUSE (2017), <https://citizen.short.gy/GEjARR>.

⁴⁶ Nicholas Leman, *Transaction Man: The Rise of the Deal and the Decline of the American Dream* FARRAR, STRAUSS AND GIROUX (September 2019), <https://citizen.short.gy/GDXBFV>.

⁴⁷ Nicholas Leman, *Transaction Man: The Rise of the Deal and the Decline of the American Dream* FARRAR, STRAUSS AND GIROUX (September 2019), <https://citizen.short.gy/GDXBFV>.

⁴⁸ Jensen began his academic career as an assistant professor in 1967 at the University of Rochester’s graduate business school, rising 12 years later to occupy an endowed chair at the New York University where he remained through 1985. In 1985, twenty years into his academic career, he joined the faculty of the Harvard Business School, splitting his time between the Cambridge, Mass. graduate school and Rochester - Faculty, *Michael Jensen*, HARVARD BUSINESS SCHOOL (website viewed August 9, 2023), <https://www.hbs.edu/faculty/Pages/profile.aspx?facId=6484>

⁴⁹ Nicholas Shaxson, *On the Birth of the Economist Class and the Untaming of Corporations* LITHUB (Jan. 15, 2020), <https://citizen.short.gy/WF1Mrf>.

raiders, predators,⁵⁰ even barbarians.⁵¹ That's because their corporate takeover deals made them personally rich often at the expense of the health of the target company.⁵² In their transactions, the private equity firms would borrow funds at high rates (junk bonds), many underwritten by Wall Street investment bank Drexel Burnham Lambert. They used these funds to buy a controlling share of a healthy company's stock. When management opposed the takeover, (making them hostile), the winning bid price won the day. To repay the expensive junk bonds, the raiders directed the newly acquired company to take on debt to repay that expensive transaction-financing the raiders used to fund their takeover. Indeed, the raiders effectively used the target company's own resources to finance their raid. They primly called them "leveraged buyouts." Often, servicing this new debt forced the once thriving company to cut labor, reduce production, terminate philanthropy, and sometimes, declare bankruptcy. The raiders, meanwhile, would charge exorbitant management fees at the target company, ensuring that they would profit even if they bankrupted the firm.⁵³ During the 1980s alone, more than a fourth of the Fortune 500 companies were subject to takeover attempts, led by the raiders and often financed by Drexel Burnham.^{54 55}

Jensen might have been dismissed as a willing apologist for justifying these private equity bust-up buccaneers. But after another decade watching raiders do little to improve performance by corporate America but much to fatten their own compensation, Jensen turned his ire on these same Wall Street financiers. In one speech, he railed against the "lying, cheating and stealing" in the financial sector."⁵⁶

Instead of shareholder primacy, in the 2000s, Jensen stressed that business managers must embrace "integrity." He co-authored a paper on this in 2017. But this time, he did not enjoy the echo chamber of private equity to amplify his thinking. Five years after posting this 2017 work, it had gotten fewer than 50 academic citations. By contrast, his

⁵⁰ Connie Bruck, *The Predator's Ball*, (June 1989), <https://citizen.short.gy/pSBPr5>.

⁵¹ Brian Burroughs and John Helyar, *Barbarians at the Gate*, (2009), <https://citizen.short.gy/HYN9lc>.

⁵² Brian Cheffins, *The Eclipse Of Private Equity* CENTRE FOR BUSINESS RESEARCH, UNIVERSITY OF CAMBRIDGE, (March 2007), <https://citizen.short.gy/sO10bE>.

⁵³ Gretchen Morgenson, *These are the Plunderers*, (May 7, 2024) SIMON & SCHUSTER <https://www.amazon.com/These-Are-Plunderers-Runs-and-Wrecks-America/dp/1982191295#>

⁵⁴ Nicholas Shaxson, *On the Birth of the Economist Class and the Untaming of Corporations* LITHUB (Jan. 15, 2020), <https://citizen.short.gy/WF1Mrf>.

⁵⁵ Gheorghe Hurduaeu, *The History of Junk Bonds and Leveraged Buyouts*, SCIENCE DIRECT (2015), <https://citizen.short.gy/h8rGuG>.

⁵⁶ Nicholas Shaxson, *On the Birth of the Economist Class and the Untaming of Corporations* LITHUB (Jan. 15, 2020), <https://citizen.short.gy/WF1Mrf>.

1976 paper “Theory of the Firm,” which celebrated shareholder primacy, received 66,000 citations.⁵⁷⁵⁸

The likes of compensation consultant Graef Crystal and Harvard Professor Michael Jensen may have reversed course but the focus on share price did not flip back to a culture of considering multiple stakeholders. In a stock market where any investor hopes to profit, the appeal of shareholder primacy became the controlling force. Indeed, some of the primary sources of capital for private equity came from worker pension plans, even though the most prominent victim of private equity were workers.⁵⁹ Some labor unions have warned against pension funds allying with raiders and other private equity managers.⁶⁰ And, a number of activist groups openly decry the plundering by private equity, funded by pension funds meant to benefit workers most savaged by this sector.⁶¹

Even as incumbent management derided the raiders’ focus on transient stock prices, the threat of a raid forced even them to internalize a focus on stock price. Writing in the Harvard Business Review, Roger Martin observed,

“The corporate raiders who came to prominence in the early 1980s amplified the effects of these trends. Their activism gave executives an added incentive to pay close attention to the stock price. If they didn’t, a raider could launch a hostile takeover bid, gain control of the company, fire them, and possibly tear the company apart to wring maximum immediate value from it.”⁶²

Backfiring Reform

Governance critics also cite a 1993 tax law as another factor boosting pay. As with the irony of Jensen criticizing high pay yet serving to fuel it further, this tax reform was meant to clamp down on overpayments, but fell far short. First, the new law capped the amount of CEO pay that could be deducted as a company expense at \$1 million. Then, the law

⁵⁷ Nicholas Shaxson, *On the Birth of the Economist Class and the Untaming of Corporations* LITHUB (Jan. 15, 2020), <https://citizen.short.gy/WF1Mrf>.

⁵⁸At a seminar developed along the lines of self-help guru Werner Erhard, he opined. “Most people think I’m an asshole,” a participant recounts him saying. The participant continued, his “personal life was littered with human debris, though he didn’t understand why.” Nicholas Shaxson, *On the Birth of the Economist Class and the Untaming of Corporations*

LITHUB (Jan. 15, 2020), <https://citizen.short.gy/WF1Mrf>.

⁵⁹ Eileen Appelbaum and Rosemary Batt, *Private Equity at Work: When Wall Street Manages Main Street*, RUSSEL SAGE FOUNDATION, (2014), <https://citizen.short.gy/wxuduX>.

⁶⁰ Lee Harris, *Labor Slams Pensions for Burnishing Image of Private Equity*, AMERICAN PROSPECT, (June 17, 2022), <https://citizen.short.gy/mS0Acs>.

⁶¹Derek Seidman, *Labor Organizers Launch a New Model for the Fight Against Private Equity*, TRUTHOUT (May 9, 2023), <https://citizen.short.gy/4WKzfw>.

⁶² Where the raiders led, today’s activist hedge funds have followed, but with far more capital at their disposal. Roger Martin, *It’s Time to Replace the Public Corporation*, Harvard Business Review (February 2021) <https://hbr.org/2021/01/its-time-to-replace-the-public-corporation>.

only permitted deductible pay after that \$1 million if the compensation was “performance-based,” with metrics approved in a shareholder vote.

“Three things happened,” according to governance expert Nell Minow.

“The first was that every CEO in America got his salary raised to \$1 million. The second was that corporate compensation committees, which remained determined to shower money on their top executives, invented a lot of make-believe performance metrics like making the company a ‘fun’ place to work.⁶³ (That was a real metric for Dennis Bakke, CEO of AES Corp.) . . . The third thing that happened was that corporations started compensating CEOs more and more through stock options.”⁶⁴

Conflicted Consultants

In addition to the rise of shareholder primacy, and the backfiring tax reform effort, “The CEO Pay Machine” author Clifford also blames the rise of pay consultants for soaring and excessive CEO pay. “In the old stakeholder world,” Clifford writes, “pay was guided by the principle of internal equity—how it compared with that of other managers and employees within the firm.” Consultants changed this by comparing the CEO’s pay with that of his peers. Since the consultant wanted to retain and secure other consultancies, it was inevitable that he chose the right “peers,” typically those with high pay. For the same self-interested reasons, the consultant would find other ways to justify higher pay. For the board, writes Clifford, the consultant relieves them of making the difficult and sometimes awkward decision of setting the CEO’s pay. “Can a consulting firm dependent on the CEO for major fees give unbiased advice about what he should be paid? With no intention of disparaging the integrity of the industry, I note that when consultants provided other services to a company, the CEO’s pay was substantially higher.”⁶⁵ (Some of these services might include merger or management restructuring ideas.)

Pay consultant-turned-critic Graef Crystal agreed. “I helped create the phenomenon we see today; huge and surging pay for good performance, and huge and surging pay for bad performance, too.”⁶⁶

⁶³ Timothy Noah, *The Great Divergence: America’s Growing Inequality Crisis and What We Can Do About It*, (2012), <https://citizen.short.gy/fzuOqM>.

⁶⁴ Timothy Noah, *You Won’t Believe How Crazy CEO Pay Has Gotten Now*, THE NEW REPUBLIC, (Oct. 6, 2022), <https://citizen.short.gy/tScmoy>.

⁶⁵ Steven Clifford, *The CEO Pay Machine*, RANDOM HOUSE (2017), <https://citizen.short.gy/Lnn3lW>.

⁶⁶ *In Memory of Graef Crystal*, KRAFT & SUSSMAN (2017), <https://citizen.short.gy/iwIH6v>.

Falling Tax Rates

Reduced individual income tax rates also contributed to rising CEO pay in the last half century. In 1952, the marginal tax rate for the highest earners was 92 percent. It applied to any income above \$200,000. For income above \$100,000, the tax rate was 90 percent.⁶⁷ It did little good to a CEO to pay him \$1 million if \$810,000 of the final \$900,000 in compensation went to Uncle Sam. In 1964, the top rate was reduced to 77 percent. Then, under the Reagan administration, it was reduced to 50 percent in 1982, then 28 percent by 1988.⁶⁸ While income tax rates inched up recently, the million-dollar CEO can pocket most of it.

Buybacks

Another reason for soaring CEO pay: the rise of buybacks. When a firm repurchases its own shares, the act of buying increases the share price. In addition, fewer shares in circulation means that company earnings are allocated across a smaller number of investors. Arithmetically, earnings-per-share are greater when there are fewer shares. Until 1982, buybacks were uncommon, considered market manipulation. The SEC, under the Reagan administration, changed the rules providing that management disclosed when they personally would buy or sell stock.

Share repurchases, or buybacks, have become a major feature of the stock market. In 2020 alone, companies bought more than \$700 billion worth of their own shares.⁶⁹ From 2010 to 2019, publicly traded companies spent \$6.3 trillion on buybacks. That average is equal to about 100% of the corporate profits of non-financial firms in 2020.⁷⁰ Stock buybacks [reached a record \\$942 billion](#) in 2024, but forecasters expected \$1.2 trillion in 2025.

Conclusion

CEO pay is soaring because of insufficient guardrails to rein it in; in fact, current governance conflicts seem to promote pay escalation. Board directors fail to represent shareholder interests as they're recruited by management, then coddled into compliance with excess pay packages. Boards technically hire pay consultants, but they do more to enable high pay then to bridle it. Institutional investors fail to represent shareholder interests because they profit from corporate pension management fees. State laws

⁶⁷ *Federal Income Tax Brackets (1952)* TAX-BRACKET.ORG, <https://www.tax-brackets.org/federaltaxtable/1952>.

⁶⁸ Tax Policy Center, *Historical Highest Marginal Income Tax Rates*, TAX POLICY CENTER, May 11, 2023, <https://citizen.short.gy/GwCbty>.

⁶⁹ *Id. Stro*

⁷⁰ Lenore Palladino, William Lazonick, *Regulating Stock Buybacks, the \$6.3 Trillion Question*, ROOSEVELT INSTITUTE (May 2021), <https://citizen.short.gy/MKk5PG>.

remain toothless because corporate interests overly influence legislatures that are hungry for incorporation fees. And corporate America now follows a compass that points only to share price maximization, ignoring other goals for any responsible economy where corporations figure prominently.

These problems aren't likely to fix themselves. Congress must intervene with sensible requirements, from tax policy that penalizes exorbitant pay, to real board elections where investors choose between competing candidates, and other important reforms. Public Citizen reviewed these reforms in our report "White Collar Crimes Still Pays."⁷¹

Meanwhile, the unfathomable trillion-dollar Musk pay package now becomes the new boundary.

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⁷¹ Bartlett Naylor, White Collar Crime Still Pays, (July 21, 2020) PUBLIC CITIZEN, <https://www.citizen.org/article/white-collar-crime-pays/#:~:text=Footnotes-Summary,thousands%20of%20mortalities%20and%20more.>