A CORRESPONDENCE OF ACADEMIC INTEREST

Editor's Note: Teachers Insurance and Annuity Association—College Retirement Equities Fund (TIAA-CREF) manages the pension savings of more than 1.5 million American educators. On 5 October 1993, it announced new guidelines for investing in public corporations. This exchange between Barry R. Gross, national program director of the National Association of Scholars, and John H. Biggs, TIAA-CREF's chairman and chief executive officer, ensued.

3 November 1993
Dear Mr. Biggs:

As one of your clients and an organization strongly committed to a liberal conception of individual rights, we are deeply concerned about your new policy statement on corporate governance, which now contains a provision stating "The board should be composed of qualified individuals who reflect diversity of experience, gender, race, and age."

This policy as it applies to gender, race, and age is both unethical and inappropriate.

It is unethical because every individual has the right to be treated on his or her own merits, and not as a member of a group or caste. An organization representing the fiduciary interests of academics should be particularly aware of this, since it is within the university, above all, that considerations of intellectual and professional capability, rather than ancestry, should always be sovereign in decision-making and personnel recruitment.

Your diversity policy is inappropriate because it will undermine TIAA-CREF's own primary responsibility of working for the optimum profit of companies, and thus maximizing the retirement income it insures. Indeed, this principle is recognized in other provisions of TIAA-CREF's policy statement, which read in relevant part, "...the primary responsibility of the board of directors is to foster the long-term success of the corporation consistent with its fiduciary responsibility to the shareholders." Your diversity policy is also inappropriate because many of TIAA-CREF's clients, like ourselves, reject the dubious moral principles on which diversity policies are based.

We are aware, of course, that you already have a CREF Social Choice Fund, which makes investments on a "socially conscious basis." Unlike your new policy regarding diversity goals, however, investment in this fund is a voluntary option for TIAA-CREF participants. Under your new policy participants will have no way of preventing their investments from being used for ends which they find morally unacceptable.

Finally, TIAA-CREF should recall that the courts have recently curbed attempts by labor unions to use membership dues for political purposes to which their members did not universally subscribe. By adopting this new policy, TIAA-CREF may well open itself to similar litigation.

The NAS most strongly urges TIAA-CREF to rescind this new and misguided initiative.

Barry R. Gross, NAS

24 November 1993
Dear Mr. Gross:

Thank you for your letter of November 3 concerning our Policy Statement on Corporate Governance. It is good to know that you have read the statement and have taken the time to respond. We know that participants in TIAA-CREF are our customers, and we keep this in mind in all matters of corporate governance.

You suggest that our call for a board of directors made up "of qualified individuals who reflect diversity of experience, gender, race, and age" is a *moral* position of the management and trustees of TIAA-CREF. I respectfully submit that this interpretation is incorrect. On the contrary, we take our position on board diversity with strong economic conviction, as we do other provisions in the statement, and with full appreciation of our responsibilities to participants.

Our purpose in making this statement is to advocate good corporate governance and sustained superior financial performance. We have no social or political agenda whatsoever. We expect that some of our recommendations may provoke debate, and some of our readers will argue that one or another provision is not economically beneficial to a company. But after considerable discussion our trustees are convinced that the economic merits behind them far outweigh any objections that might be raised.

Let me comment on two related provisions on board composition. One involves the issue of "independent directors." There are econometric analyses which purport to show that independent directors do *not* necessarily increase shareholder value. We believe, however, that the underlying economic experience of those studies is inadequate to support that conclusion, and we continue to hold that a publicly held company should have independent directors. This is an *economic* judgment, not a moral or political one.

Second, we believe that a board should have a fixed retirement policy of perhaps age 70 or 75 for its directors. Even though we understand the arguments against mandatory retirement—and are dealing with them every day in higher education—we feel that on balance the performance of the board is better with a set retirement age. Again, far from being a moral or political position, this is an economic judgment.

Finally, we believe that a diverse board of qualified people—and I would emphasize "qualified"—is more responsible than one made up of qualified people concentrated by gender, age, or any other experience, and that it is likely to be more responsive to the needs of shareholders, customers, and employees who are themselves likely to reflect the broad diversity in our society. There may be others who will argue against such a provision, but I have never seen an economic rationale for a board with heavy concentrations in these or any other areas. It is hard to believe that anyone would ever maintain such a position. Accordingly, on an economic basis, we remain firm in our belief that a diverse board will perform in a manner superior to a concentrated one. I would be happy to hear from you, or from other members of the National Association of Scholars, if you have evidence to the contrary.

I believe that your letter does not take into account the context in which our recommendations are made. In the introduction we state that our governance recommendations pursue the "overriding interest in the long-term development and vitality of our public corporations." We refer to superior performance throughout our statement. Additionally, in the discussion of social responsibility issues, we believe that concerns for the environment, equal employment opportunities, and effective employee training are all considerations in building long-term shareholder value.

I hope this response addresses any misapprehension you or members of the National Association of Scholars might have concerning TIAA-CREF's Policy Statement on Corporate Governance.

We understand that our goal is to maximize your investment returns over the long-term including, we hope, an extended and prosperous retirement.

John H. Biggs, TIAA-CREF

22 December 1993

Dear Mr. Biggs:

Thank you for your reply of November 24th to my letter of November 3rd, which concerned CREF's new policy calling for diversity in company boards of directors. The position you take is really quite astonishing. By your own admission, CREF instituted three policies. For two of these, diversity and age limitation on board members, there is no supporting evidence; for the third, independent boards of directors, the sole evidence to which you refer is negative. What an extraordinary way to make policy! By such methods, any policy whatsoever may be rationalized.

If there is no evidence, as there is not, that diverse boards of directors provide superior financial performance, the sole ground on which they are supported is the ground of social ideology. Incidentally, I did not suggest, as you wrote in your second paragraph, that yours was a *moral* position, but, rather, that it was quite the opposite—an immoral position. For these reasons and all those cited in my earlier letter, the NAS is obliged to urge TIAA-CREF once again to rescind this new and misguided initiative.

Barry R. Gross, NAS