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n87 Interestingly, the seminal laws creating and empowering the Securities and Exchange Commission actually seem to authorize the SEC to make rules in connection with the purchase and sale of securities that are generally in the public interest, even where "the public interest" is distinct from shareholder interests. For example, Section 10(b) of the Securities Exchange Act of 1933 makes it unlawful

(b) to use . . . in connection with the purchase or sale of any security . . . any manipulative or deceptive device . . . in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b) (2006) (both emphases added). Nevertheless, the securities regulation apparatus has not yet been put to use directly in the service of most non-shareholding workers and consumers.

n88 See *supra* text accompanying notes 12-15.

n89 See Werner H. Erhard, Michael C. Jensen, & Steve Zaffron, *Integrity: A Positive Model that Incorporates the Normative Phenomena of Morality, Ethics, and Legality* (Harvard Business School NOM Unit Working Paper No. 10-061, 2010) [hereinafter *Integrity: A Positive Model*], available at <http://papers.ssrn.com/sol3/papers.cfm?abstractid=1542759>; see also Jensen, *supra* note 3 (explicating the integrity project). For ease of reference and because his work is of abiding interest to corporate law scholars, I attribute this work in the text to "Jensen," while reiterating the collaborative nature of his project by reference here and in subsequent footnotes. Regarding the view that the traditional agency problem has been more or less well contained, see Jensen, *supra* note 3 (emphasizing the overlapping power of several modern solutions to the shareholder's monitoring problem, including most importantly the capital markets, the law of fiduciary obligation, and modern compensation structures for upper-management).

n90 Any prescriptive tool promising greater efficiency must meet the question of why the churning market, filled with greedy individuals, has not already implemented it. Jensen explains the market's failure to achieve integrity gains as a function of cognitive, motivational, and behavioral biases—he relies on the same literature that I rely on to demonstrate the futility of the shareholder primacy norm as it relates to non-shareholder interests. See *supra* text accompanying notes 15-21. The economist in Jensen cannot keep from associating a number with his project—he argues that organizations that operate with integrity in the manner he defines it will increase productivity by 100-500% over their non-integrity levels. Jensen also claims that in corporate operations 25% of unrealized productivity is attributable to the agency problem, 25% to the problem of co-locating information and decision-rights, 25% to the problem of integrity, and 25% to as-yet unknown causes. See Jensen, *supra* note 3. The implausibility of this kind of quantification strikes me as unnecessarily distracting from the overall cogency and utility of his general claims.

n91 *Integrity: A Positive Model*, *supra* note 89, at 18.

n92 *Id.* at 31-41. Jensen provides examples of the adverse consequences of "out of integrity" behavior in numerous contexts including academics, business, and religious organizations. *Id.* at 72 & n.47, 74.

n93 See *id.* at 44.

n94 See, e.g., *The Public Choice Problem in Corporate Law*, *supra* note 8, at 285-93.

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