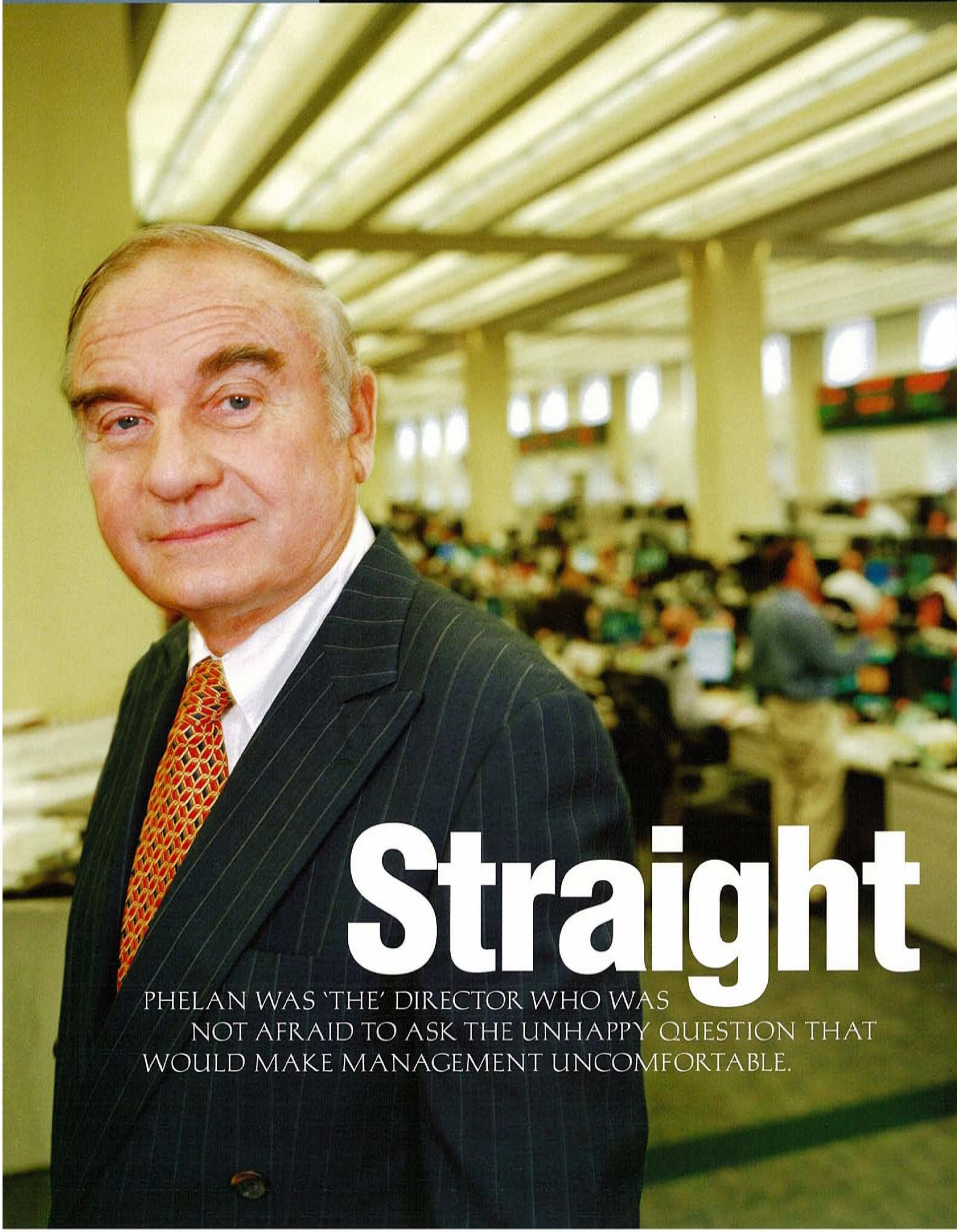
JOHN J. PHELAN JR. for pressing Merrill Lynch to enhance disclosure in its public and customer documents



Straight

PHELAN WAS 'THE' DIRECTOR WHO WAS NOT AFRAID TO ASK THE UNHAPPY QUESTION THAT WOULD MAKE MANAGEMENT UNCOMFORTABLE.

JOHN J. PHELAN JR. — Director's Snapshot

BORN: May 7, 1931, New York, N.Y.

EDUCATION: B.B.A., Magna Cum Laude, Adelphi University

CAREER HIGHLIGHTS: Chairman and CEO, New York Stock Exchange

HOMETOWN: Locust Valley, Long Island, N.Y.

FAMILY: Married Joyce on April 3, 1955; three sons, six grandchildren

MOST MEMORABLE SUMMER JOB: Clerk on the floor of the NYSE at age 16

BEST VACATION IN THE PAST FIVE YEARS: Theater and concert trip to London

BEST BOOK READ OVER THE PAST YEAR: *1776,* by David McCullough

BEST MOVIE SEEN OVER THE PAST YEAR: *Downfall,* "about the last days of Hitler"

FAVORITE ARTISTS: Turner, Cézanne, Hockney

SOMETHING MOST PEOPLE WOULD BE SURPRISED TO KNOW ABOUT ME: "I am an avid gardener and a kid at heart."

WON'T LEAVE HOME WITHOUT: Briefcase

MOST RECENT PUBLIC COMPANY BOARDS: Merrill Lynch (retired 2004); MetLife (retired 2005)

bling up in the boardroom. Phelan asked whether anyone had actually told CEO Kay Whitmore that he wasn't doing a good job. "No one had," says Phelan. So he took the bull by the horns.

"I was the one to say, 'Set up parameters to measure him. Give him a chance to change things,'" continues Phelan. "Then, after six to 12 months, I was the first one to say, 'This isn't working.'" He called a special meeting of the board. "John took a leading role in posing questions about the direction of the company. He helped us understand that a different type of CEO was needed," Emerson says.

The board brought in George Fisher from Motorola—Kodak's first outsider CEO since its founding in 1884. Unfortunately, concedes Phelan, "the problems at Kodak could not be solved during the tenure of any one chairman because the company was in a gradual transition from 35 millimeter color film to digital." Fisher retired early, and Kodak president and COO Dan Carp took over. In 2003, Carp cut the dividend by 72% in order to invest \$3 billion in digital and reignite growth. But it was a case of too little too late. Kodak failed to meet Wall Street's expectations, and in June 2005, Carp stepped down and Kodak announced additional layoffs. In August the company reported that the SEC had begun an informal inquiry into Kodak's restatement of earnings from 2003 and 2004.

While critics accuse the Kodak board of being asleep at the switch, Emerson and Phelan point out that the machinations, however messy, have produced results. While challenges remain, the Kodak culture has finally begun to change. The company is No. 1 in U.S. digital camera sales, "a huge statistic," notes Emerson.

Phelan also played a pivotal role in a rocky management change at Merrill Lynch. The board wanted Merrill CEO Dave Komansky to name a president who would eventually succeed him. The three top contenders were Stan O'Neal, who headed the private client group; Jeffrey Peek, the chief of asset management; and Thomas Davis, who ran the investment banking business. The struggle was bitter, with the firm divided into rival factions. After O'Neal was named the other contenders left the firm. The transition "wasn't as smooth as it could have been. It was quite a substantial change in personalities and management styles. There was a lot of flux," says Prueher. "John was stable. He conveyed a levelheadedness to the board through it all."

Phelan served on or chaired the audit committees of most of the boards on which he served. When he joined the Merrill board, notes Aulana Peters, "there were no Sarbanes-Oxley rules. As soon as John came on the audit committee, he instituted a practice that was not the practice on my other boards—he had the committee meet privately. We need to appreciate how important that was. It was ahead of the curve, and not the result of any rules dictated from on high."

The meetings generally ran over their allotted time, making the audit committee perpetually late to the full-board meetings. But Phelan never cut short the committee meetings. Prueher reports that Phelan used to ask committee members and management, "If you had one silver bullet to shoot to get something done, what would it be?" He would sometimes add, "Other than shooting me, that is." When Phelan retired in 2004, the Merrill audit committee presented him with a silver bullet on a plaque. The plaque read, "Meeting time 7:30-???"

Sums up Merrill's Stan O'Neal: "John Phelan was a demanding director, but someone you could work with. You wanted to deliver for him." ○

BY KAREN MURRAY

"Tell it like it is." That's the maxim John Phelan lives by. Such was the case throughout his tenure as chairman and CEO of the New York Stock Exchange. Such has been the case in all his public affairs and philanthropic work. And such has been the case throughout his years of service as a director of Merrill Lynch, Met Life, Eastman Kodak, Sonat, Inc., and Avon Products.

"John always recognizes what the right thing is and then acts on it," says Aulana Peters, a former SEC commissioner and fellow Merrill Lynch director. "He was not afraid to ask the unhappy question that would make management uncomfortable," adds Paul Gray, a fellow Kodak director and former president of MIT. "Morgan Stanley could have used him," sums up Tish Emerson, another fellow Kodak director and president emerita of Wheaton College.

Phelan, a former Marine who served with a combat unit in Korea, chuckles at his reputation. "I would say, 'Do you know the story of Socrates? He was Greek, he had an inquiring mind, he asked questions, they poisoned him.' At times I thought perhaps I should get a food taster," he says drolly.

Case in point?

In March of 2000, Merrill Lynch pioneered a new practice in the brokerage industry. Traditionally, uninvested cash in

Shooter

clients' accounts had been automatically swept into money market fund accounts at the end of each business day. Merrill began sweeping that cash into deposit accounts at Merrill-owned banks instead. The selling point for clients: The FDIC insured each account up to $100,000. The selling point for Merrill: Rather than merely collecting management fees on the money funds, the firm could redeploy those assets into higher-paying loans or make other investments.

Phelan was a brokerage client as well as chairman of Merrill's audit and finance committees. While he knew that the disclosure about the new sweep policy provided in his brokerage account documents passed regulatory muster, "he thought we could do better," says Peters. "He wanted more disclosure and less legalese." Phelan wanted Merrill to tell it like it is, and he made a difference.

Phelan was concerned that investors might not realize that bank deposit accounts may not pay as much as money funds. When interest rates are low, money funds and deposit accounts have comparable interest rates. But in rising rate environments, money funds usually have a higher yield. The gist of his argument, Peters relates, was "let's tell the client that we have this practice. They may be able to get a higher interest rate if we did something else with the money, other than sweeping it into our bank. They should ask their financial advisor about it."

At the next audit committee meeting, Phelan raised the issue with the head of Merrill's Global Client business and with the vice chairman, who oversees Merrill Lynch Investment Management. He pushed them to revise the disclosure to more directly describe what was happening to the cash at the end of the day. Phelan wanted Merrill clients to fully understand that they had an option; that they could elect to keep their cash in the money market accounts and potentially earn a higher yield.

"The long-term interests of the shareholders are served by taking care of the clients," notes Adm. Joe Prueher, another fellow board member. "John said 'Put it in plain language. Let people know what's happening in these sweep accounts.' He pushed it. "

John always recognizes what the right thing is and then acts on it.

AULANA PETERS • FELLOW MERRILL LYNCH DIRECTOR

Phelan's concerns were ahead of their time. The practice of sweeping into proprietary banks that Merrill introduced has now become an industry standard. A November 2004 study by iMoneyNet, a research firm, found that bank deposit cash sweep accounts have grown 53% annually since 2000. Most of that growth has come at the expense of money market funds. In February of 2005, the New York Stock Exchange warned brokerage firms about the way they handle the sweeps. The exchange is concerned that some firms have not fully disclosed the difference in rates between deposit accounts and money markets. Thanks to Phelan's leadership, Merrill has been telling it like it is all along with regard to disclosure.

"There were other examples where Phelan wanted to make sure there was clarity," Prueher adds. "He would read the annual report to make sure things weren't obscured in the footnotes. He'd be very straightforward."

At Eastman Kodak, Phelan "stepped up and performed the function of a lead director before the concept of a lead director was established," reports Emerson. When Phelan joined Kodak in 1987, the company was struggling. The digital age was eroding Kodak's primacy in its marketplace, and grumblings about the need for new leadership were bub-