

**THE EFFECTS OF RECIPROCITY AND COGNITIVE DISSONANCE ON BOARD
MEMBERS' CLAWBACK DECISIONS**

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My dissertation is composed of two studies, an experiment and a survey. The experiment examines whether the norm of reciprocity causes board members to make decisions that favor those who nominated them to the board. I hypothesize that board members are more likely to bias decisions in favor of the CEO at the expense of shareholders when the CEO nominated them for the board than when they were nominated by shareholders. I also examine whether this reciprocal behavior is greater when it is easier for the board member to rationalize helping the CEO. I test these predictions using an experiment in which the board member recommends the amount of incentive compensation to claw back from the CEO after an earnings restatement. I do not find my hypothesized results using board members' own decisions because most board members report they would claw back the full amount regardless of who nominated them. I also use an approach common in psychology literature and examine board members' beliefs about *other* board members' clawback decisions, and find results consistent with my reciprocity hypothesis. Specifically, board members believe other board members will claw back less compensation from the CEO when they were nominated by the CEO than they do when nominated by shareholders. I find mixed evidence regarding whether board members claw back less when it is easier to rationalize helping the CEO. My survey investigates board members' clawback decision further by examining board members' perceptions regarding the decision to claw back compensation from a CEO. The findings of these studies inform the SEC's current debates regarding whether to allow shareholders to nominate board members and how much discretion board members should have over clawback decisions.

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Dedication

This dissertation is dedicated to my husband, Jaren Ford, and my children, J.J., Ryan, Chase, Clawson, and Delia.

Jaren, I thank you for the journey that we shared these last six years. Though we both had more responsibilities than ever before, we somehow managed to work on our relationship such that it transformed into something more beautiful than I ever expected it could be. I am so grateful for your love and support and for the effort and hard work you put into our relationship and into providing for us. I know it was a great sacrifice to give up your career so you could join me in moving our large family across the country. I cannot express enough how much your support has meant to me. Thank you for being exactly what I needed and wanted in a husband.

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1.0 Introduction

After numerous corporate scandals in the early 2000's, regulators (Sarbanes-Oxley, Section 301) and exchanges (NYSE, Section 303A) changed corporate governance requirements in an effort to improve oversight of top management. These rules and regulations address a long-debated component of board composition, i.e. independence from management. Recent research investigates the concern that board members who are considered independent by the new standards are not necessarily independent in fact because of personal and professional relationships that are not, and possibly cannot be, addressed by the new requirements. But these relationships between board members and management may not be the only mechanism through which management can exert influence over directors. Current board practices may also lead board members to make decisions that are not independent and objective. One such practice is CEO influence over board nominations. The literature on reciprocity shows that individuals become obliged to each other on the basis of prior behavior (Gouldner, 1960). Thus, if the CEO nominates a director for the board, and the board member benefits from compensation or reputation effects, the new director may feel an obligation or a duty to return a favor to the CEO. The goal of this study is to test whether, consistent with the social norm of reciprocity, directors' decisions become aligned with the interests of the individual who appointed them to the directorship.

Apart from the CEO, another source of appointments for directors is a nominating committee. Over the last few decades, the percentage of boards that have a nominating committee has significantly increased, such that "virtually all boards (of S&P 500 companies) have a nominating/governance committee" (Spencer Stuart Board Index, 2006). Though the specific duties of nominating committees can vary by company, in general, the nominating committee is a

group of directors responsible for overseeing the selection and approval of nominations for directors to the board. One purpose of the nominating committee is to create an independent review process for nominating directors. However, recent research shows that even with nominating committees, CEO power over the nominating process varies greatly, with some CEOs having absolute control over the selection process (Clune et al., 2014). Thus, the presence of a nominating committee does not preclude CEO appointment of directors.

Companies' use of a nominating committee was intended to improve shareholder access to director nominations. A report by the Division of Corporation Finance (2003) indicates that, although nominating committees generally accepted shareholder recommendations for consideration, it was rare for the nominating committees to actually nominate the shareholder-recommended candidates for the board on the proxy statement for shareholder vote.

One recurring proposal to increase independence and oversight is to allow shareholders to directly nominate their own candidates for the board of directors. Before 2010, each time this proposal was put forward, the SEC decided not to act on it. The most recent attempt by the SEC in 2010 gave shareholders access to proxy materials, allowing certain shareholders the right to place their own nominations on the proxy statement, along with the board's nominations, for the shareholder vote.¹ However, this new regulation was overturned by the US Circuit Court of Appeals, who believed the SEC did not validate its claims that proxy access for shareholders would improve shareholder value and board performance (Holzer, 2011). In response to the call from the U.S. Circuit Court of Appeals to analyze the potential benefits of shareholder nominations of directors, one purpose of my study is to examine whether having shareholders nominate board

¹ The SEC requires shareholders to hold a minimum of 5% of the shares of the company, held for at least 3 years, to be allowed access to the proxy statement with their director nomination.

members increases board independence from management via reciprocal behavior toward shareholders.

More generally, my study examines the scenarios under which reciprocal behavior toward the person or group who nominated them affects board members' decisions. If board members understand that their main duty is to represent shareholders, then reciprocal behavior by board members toward the CEO at the expense of the shareholders would be inconsistent with board members' responsibilities to shareholders. As such, board members may experience two conflicting cognitions: the desire to reciprocate to the CEO and the desire to fulfill their duty as shareholder representatives. Thus, when it is salient that reciprocal actions depart from board member responsibilities, board members would experience cognitive dissonance, which is defined as the psychological discomfort that comes from wanting to act in a manner that is inconsistent with what they believe they should do (Festinger, 1957). To reduce this dissonance, board members must either change their beliefs or choose an action that will conform to their beliefs. Thus, in instances where it is salient how they should behave to fulfill their obligation to shareholders, board members may find it more difficult to change their beliefs. To avoid disutility from behaving in a manner inconsistent with their belief regarding their responsibility to shareholders, I expect them to choose the action that is consistent with shareholder preferences. In contrast, when shareholders' desires are not clearly known, I expect board members to be more likely to change their beliefs to suit their desired action, i.e. reciprocating toward the nominating party.

I conduct two studies, an experiment and a survey, to investigate board members' clawback decisions. The experiment examines reciprocity in a clawback setting in which a CEO received

incentive compensation for achieving a target level of earnings. Subsequently, earnings were restated such that the CEO would not have achieved the target earnings if earnings had not been misstated. The board members' decision is whether and how much compensation to claw back from the CEO. I make the following three predictions regarding how reciprocity and cognitive dissonance will influence board members' clawback responses. First, I hypothesize that board members who are nominated to the board by the CEO will claw back less of the CEOs' compensation than participants who are nominated to the board by shareholders. Second, I hypothesize that board members will claw back less from the CEO when earnings miss the target by a small amount than when earnings miss the target by a large amount. Finally, I hypothesize an interaction between the nomination source and the restatement size – specifically, I predict that the difference in board members' clawback decisions when shareholders nominate them versus when the CEO nominates them will be larger when earnings miss the target by a small amount than when earnings miss the target by a large amount.

The experiment tests the effect of reciprocity and cognitive dissonance on the nomination process by using a 2 (large or small restatement size) x 3 (nominations by the CEO, a head-hunting firm, or shareholders) experimental design in which board member participants consider a hypothetical scenario. Participants are told that they have been elected to serve as new board members in the capacity of a compensation committee member and were nominated by the CEO, a head-hunting firm (baseline), or shareholders. The CEO is subject to a clawback provision that allows the board to recoup incentive compensation when a restatement of prior period earnings occurs that would have decreased the CEO's compensation if the restated financial results had been known at the time. Participants are then told that the prior period's income has been restated, which decreases net income below the performance target required for incentive compensation. I

vary the size of the restatement to vary the degree to which board members are likely to feel cognitive dissonance, either telling board members that income missed the target by a large amount or a small amount. The expectation is that the larger the restatement, the more difficult it would be to treat the CEO favorably at the expense of the shareholders. The new board members then decide how much of the CEO's compensation to claw back and report the amount they believe other board members will claw back, on average.

I test my hypotheses using board members' own clawback responses and their beliefs about other board members' clawback responses. I first use participants' own clawback responses and find that the majority of board members report they would claw back the full amount of CEO compensation subject to the clawback policy, regardless of who nominated them to the board or the size of the restatement. Although this result is not consistent with my hypotheses, it is consistent with prior research on social desirability bias, which is the tendency of individuals to under-report socially undesirable behavior and to over-report socially desirable behavior (Paulhus, 1984; Randall and Fernandes, 1991; Tourangeau and Yan, 2007). In this literature, researchers overcome participants' propensity to engage in social desirability bias by asking participants what they believe others would do. Anticipating that board members' responses about their own behavior could differ from their expectations about other board members' responses, I incentivized board members to estimate the average of other board members' clawback decisions. I find that board members estimate that other board members will claw back significantly less than the board member would (i.e., their own clawback amount is greater than their beliefs about others' clawback amount).

Consequently, I next test my hypotheses again using board members' estimate of other board members' clawback decisions as the dependent variable in two different ways: 1) the

estimate of others' clawback amounts, and 2) a dichotomous variable measuring whether participants estimated other board members would choose to claw back the full amount of CEO compensation. I find that board members believe other participants would claw back significantly less when board members were nominated by the CEO than when shareholders nominated them to the board, indicating that participants believe other board members will reciprocate toward the nominating party. This result also held when I used the dichotomous variable as the dependent measure. However, my predicted interaction of restatement size and nomination source is significant for the dichotomous variable only. I find mixed evidence regarding cognitive dissonance because the smaller restatement size did not consistently (i.e., across both dependent measures) make it more likely that board members would reciprocate to the CEO when nominated by the CEO.

I also conducted a survey in which participants responded to questions about clawbacks in general after completing the experimental part of the study. The main findings of the survey are that board members believe clawbacks serve to instill shareholder confidence in the corporate governance of the firm, have a positive financial impact on shareholders, help to prevent future restatements, but can harm their relationship with the CEO.

My experimental results extend prior clawback literature by examining how board member discretion influences clawback decisions. These results also have implications for regulators involved in new legislation regarding both shareholder nomination and clawback policies by providing evidence of the type requested by the US Circuit Court of Appeals regarding the consequences of CEO involvement in the nominating process and the effects of allowing shareholder access to the proxy statement for director nominations. My experiment provides evidence that board members believe other board members will use their discretion to reciprocate

toward the nominating party. By allowing shareholders to include their nominees in the proxy statement, the feelings of obligation created by the nominating process can be directed toward shareholders, thus increasing board members' independence from management.

My survey extends prior literature on clawbacks by providing information about board members' beliefs regarding clawbacks in practice. The survey finds that board members believe no-fault clawback policies are fair to both the CEO and to shareholders and view clawbacks of compensation as a benefit to the company and to shareholders. The SEC is currently debating whether board members should have discretion over clawback decisions. Given the survey result mentioned earlier, that board members believe clawing back compensation from the CEO will harm their relationship, one benefit of eliminating board members' discretion could be an improvement in the CEO and board members' relationship.

2.0 Background and Motivation

2.1 Chapter Overview

This chapter reviews the regulations and history related to board member nominations and clawbacks of CEO or other top managers' compensation. Section 2.2 reviews the early proposals for shareholder nominations and the SEC responses to those proposals, the rise of nominating committees, and the more recent push for changing how shareholders submit names for nomination. Section 2.3 describes the clawback process and current related research and regulations. Section 2.4 elaborates on the motivation for my study.

2.2 Shareholder Nominations

2.2.1 History of Shareholder Access to the Proxy Statement

The idea of shareholder nominations and access to the proxy statement has been debated for over 70 years. The first legislation to address this aspect of fair corporate suffrage was the 1942 SEC adoption of rule 14. This legislation established the rules regarding shareholder access to proxy materials and set procedures for the way shareholders could present material for a shareholder vote. Though the SEC initially considered allowing shareholder nominations for the board in the proxy statements, five years later the Commission adopted rules allowing companies to exclude shareholder proposals relating to director elections (Exchange Act Section 14(a)-8).

In 1977, the SEC again addressed the topic of shareholder nominations for director elections to the board but decided against changing the proxy rules in Section 14. Instead, the SEC established disclosure requirements obliging companies to disclose whether the board has instituted a nominating committee, if the board will consider and evaluate shareholder proposals for nominations to the board, a copy of the charter for the nominating committee, and several other requirements the SEC believed were important to shareholders (Release No. 34-15384, Dec 1978). The nominating committee was meant to be an alternative to direct shareholder access to proxy materials in the nomination process. The SEC stated that it would monitor board progress in adopting nominating committees and the extent to which they considered shareholder proposals (Division of Corporation Finance Staff Report, July 15, 2003). Because of the rapid rate at which companies instituted nominating committees, the SEC concluded that revisiting shareholder access was not appropriate at that time.

2.2.2 Nominating Committees

Nominating committees consist of a group of directors whose responsibility, at least in part, is to find and approve directors for the board, establish processes for board nomination, and identify and communicate the necessary characteristics for potential board member candidates. Up until the late 1970's, nominating committees and formal nomination processes were rare. It wasn't until the SEC established requirements in 1978 regarding disclosure of the adoption of nominating committees and their processes that widespread adoption of nominating committees took place (Murphy, 2008). Bacon (1981) found that while only 8% of companies had a nominating committee in 1971, in 1980, approximately 30% of companies had adopted a nominating

committee. By 2006, “virtually all boards (99% of S&P 500 companies) had a nominating/governance committee” (Spencer Stuart Board Index, 2006).

The SEC 1978 disclosure requirements regarding nominating committee adoption and processes was originally intended to improve shareholder access to director nominations. A report by the Division of Corporation Finance (2003) indicated that, although nominating committees generally accepted shareholder recommendations for consideration, the shareholders’ recommendations for board members were rarely included in the proxy statement.

2.2.3 Current Legislation

Another round of discussion ensued as a result of the corporate scandals in the early 2000’s. In 2003, the SEC put forth Proposal 14(a)-11 which, if enacted, would establish rules to allow shareholders limited access to a firm’s proxy statements after at least one of two proposed triggering events occurs. The first proposed triggering event would happen when 35% or more shareholders “withheld” their votes from one of management’s nominees in the previous annual shareholder meeting. The second triggering event would occur when a shareholder or group of shareholders proposes that the company be subject to rule 14(a)-11 and the proposal receives 50% or more of shareholder votes at the annual shareholder meeting. If either of these two events occurs, shareholders would gain access to the proxy statements for two years subsequent to the triggering event. With this proposal came numerous comments from shareholders, companies, and the legal community. Corporate boards and top management argued that such a regulation would “disrupt board dynamics and balkanize boards” (Henry McKinnell, Chairman, The Business Roundtable, 2003). Consistent with this viewpoint, Clune et al. (2014) find that nominating committees place significant focus on whether a potential candidate will “fit” within the current culture and style of

the board. Shareholder appointments would preclude board control over personality and background characteristics of the nominees, which directors believe are essential to the proper functioning of the board as a whole (Clune et al, 2014), but which has also been thought to be an impediment to independence (Murphy, 2008). With so much opposition, the SEC did not pursue adopting regulation in conjunction with this proposal for shareholder access at that time.

One change the SEC made in 2003 for enhanced nominating committee disclosure within the proxy statement was to “require companies to identify the category or categories of persons or entities that recommended each nominee... specifically...those instances where a nominee was recommended by the chief executive officer of the company.” (SEC Disclosure Regarding Nominating Committee Functions, 2003). Thus, even without private information, all nominees are given information relating to the source of their appointment.

With the passage of the Dodd-Frank Act (2010), the SEC was given the authority to revisit legislation regarding shareholder nominations. In 2010, a new rendition of proposal 14(a)-11 passed, requiring boards of directors to include shareholder nominations in proxy statements if state law and corporate bylaws permit shareholders to nominate directors at shareholder meetings. This proposal was in direct contrast to Section 14(a)-8, which allowed boards to exclude from the proxy statement any shareholder proposal related to director nomination or election, including information regarding current or potential directors that might influence director election.

In July of 2011, the U.S. Circuit Court of Appeals overturned the new SEC legislation, stating that the SEC did not adequately analyze the costs and benefits of the new law. The SEC was required by law to study the effects of its ruling on efficiency, competition, and capital formation. Of more relevance to this study was the censure that the SEC did not validate its claims that proxy access for shareholders would improve shareholder value and board performance

(Holzer, 2011). Until the SEC fulfills the mandate from the courts, shareholder access will continue to be subject to rule 14(a)-8, which allows boards to exclude shareholder nomination of directors in proxy materials.

2.3 Clawbacks of Executive Compensation

2.3.1 History of Clawback Policy Adoption

Clawbacks are recoveries of performance-based compensation that was previously paid to an executive or other employee of the firm. Clawback policies, which are the firms' specific rules that stipulate the triggers for and the types of compensation subject to a clawback, have become increasingly popular in public companies as a result of regulators' interest in recouping erroneously-awarded executive compensation. Babenko et al. (2012) find that less than 1% of S&P 1500 firms had adopted clawback policies in 2001. Sarbanes-Oxley (2002) introduced the first regulation related to clawbacks of executive compensation in Section 304, which gave the SEC the ability to recoup bonuses from executives when financial statements were restated as a result of material noncompliance with reporting guidelines *and* misconduct. Despite the new regulation, the SEC recovered compensation very rarely (Fried and Shilon 2011). Schwartz (2009) reported that in the first six years after adoption of SOX (2002), the SEC recovered compensation in response to Section 304 only twice. Khuzami, a SEC Director in the Division of Enforcement, said in a speech to the Society of American Business Editors (2010) that the SEC litigated clawbacks in only 11 cases in the two and a half years prior to his speech.

Babenko et al. (2012) report the number of firms who adopt clawback policies by year. Interestingly, the number of firms who adopted clawback policies increased at a very slow rate until 2007, likely due to the SEC's inaction on the existing regulation. In 2006, the Council of Institutional Investors submitted a proposal to the SEC to require companies to either disclose their clawback policy or state their reasons for not having a clawback policy. The SEC adopted this proposal in Section 402(b)(2)(viii) of Regulation S-K. Beginning in 2007, the rate of clawback policy adoption increased rapidly. In 2010, the Dodd-Frank Act established new rules for clawbacks of executive compensation that removed the necessity of misconduct. Since 2010, clawback policy adoptions have continued to increase. The Equilar Executive Compensation & Governance Outlook (2017) reported that 92% of S&P 500 firms disclosed a clawback policy in 2016.

2.3.2 Clawback Literature Review

Recent academic literature on clawbacks primarily focuses on the economic impacts and/or determinants of adoption of clawback policies. Firms that voluntarily adopt clawback policies are associated with ex post decreases in accounting restatements, current earnings response coefficient increases, audit fee decreases, lower likelihood of reported internal control weaknesses, reductions in discretionary accruals (but increases in real earnings management), lower subsequent likelihood of shareholder litigation, positive market reaction to adoption of the policy, and increases in total CEO compensation² (Chan et al. 2012, Iskandar-Datta and Jia 2013, Babenko et al. 2015, and

² Dehaan et al. (2013) find an increase in total and base executive compensation. Iskandar-Datta and Jia (2013) find no evidence to suggest that CEO compensation increases after clawback policy adoption.

Dehaan et al. 2013, Chan et al. 2014). However, Denis (2012) argues that some of these findings could have alternative explanations, such as clawback policy adoption giving the illusion of greater information quality to auditors and investors, or that adoption is merely one of several components of a firm's new strategy to increase monitoring and improve company financials. Her perspective suggests that rather than causing all of these effects, it is possible that these factors are the determinants of adopting a clawback policy.

Several archival studies examine the determinants of clawback adoption. Brown et al. (2011) show that lower CEO influence on the board, larger firms, and higher mergers and acquisitions bonuses are associated with adoption of clawback policies. Babenko et al. (2015) find a correlation between clawback policy adoption and firms that have greater external monitoring, firms with prior executive misconduct, greater board member independence, and a preference for low-risk executives. Addy et al. (2014) find an increased likelihood of adopting a clawback policy when firms have a monitoring governance structure versus management entrenchment and when firms' compensation committee members have interlock relationships with board members from other organizations that have clawback policies.

In addition to the literature on the determinants and impacts of clawback policy adoption, there are a few studies that examine the effects of clawbacks experimentally. Pyzoha (2015) conducts an experiment testing how management discretion over the restatement decision affects the frequency of financial restatements. He finds that when management has relatively more power than the audit firm, having a clawback policy leads to fewer restatements. Pyzoha's (2015) results suggest an alternative explanation for the results found in Chan et al. (2012) and Dehaan et al. (2013), both of which suggested that adopting a clawback policy led to fewer restatements due to increased financial statement quality. Hodge and Winn (2012 working paper) conduct an

experiment examining the effect of clawbacks on management's risk-taking behavior after enforcement of a clawback. They find that managers who took relatively less risk than other managers before the restatement took relatively more risk than other managers after the clawback was enforced. Both of these experiments examine changes in *management* behavior as a result of clawback policy adoption.

In summary, the research on clawbacks provides some evidence about the determinants and impacts of voluntary adoption of clawback policies as well as some evidence regarding how managers respond to clawback adoption and enforcement. To my knowledge, no research has focused on how *board members* make decisions regarding actual clawbacks of compensation. One reason for this may be the paucity of data. Babenko (2015) find no instances of clawbacks for 232 firms who adopted a clawback policy and have subsequent restatements. My research extends the existing literature by examining how board members make decisions regarding clawbacks of compensation. Specifically, I focus on whether board member independence, which has an impact on clawback policy adoption, also affects board members' clawback decisions.

2.4 Motivation

Shareholders have made numerous attempts to pass legislation that will allow them to include their own nominations for board members in proxy statements. Despite 70 years of intermittent consideration of shareholder access, the SEC only recently passed legislation requiring companies to include shareholder nominations in proxy statements. However, this legislation was then promptly overturned by the US Circuit Court of Appeals who required the SEC to perform more analyses regarding the costs and benefits of such legislation. Shareholder groups that

supported some level of proxy reform stated that, in addition to providing shareholders with access to the election process to nominate director candidates who would represent investors' best interests, such reform would also make corporate directors more responsive to shareholder concerns (SEC Staff Report, 2015). My research is designed to provide evidence on a potential benefit of requiring firms to include shareholders' nominations of board members in the proxy statement for shareholder vote. The potential benefit could be to increase board members' sense of obligation to shareholders through the board members' desire to behave reciprocally toward the shareholders. In addition, my study adds to the literature on clawbacks of executive compensation by examining how board members perceive and make clawback decisions.

3.0 Hypothesis Development

3.1 Chapter Overview

This chapter reviews psychology theory and other literature to develop the hypotheses tested in my experiment. Section 3.2 discusses regulator's rationale for keeping board members independent from management and describes related research findings. Section 3.3 discusses how the social norm of reciprocity relates to board of director processes. Section 3.4 describes the history of clawback provisions and Section 3.5 reviews the literature on cognitive dissonance and discusses how it could affect board member decisions.

3.2 Board Member Independence

As evidenced by the increasing number of rules, regulations, and proposals in the Exchange Act, Sarbanes-Oxley, Dodd-Frank, and exchange listing requirements, director independence from management is a widely recognized necessity for effective corporate governance and oversight of top management. Sarbanes-Oxley stipulates that the audit committee for public companies must be fully independent (SOX 2003) and both Nasdaq and the NYSE require that the majority of the directors on the board (NYSE 303A) and all members of the nominating committee be independent (NYSE 303A.04, 2009; Nasdaq 5601, 2009).³ In addition, an Institutional Shareholder Services

³ SEC requirements only mandate disclosure of nominating committee independence, or lack thereof; however, for any publicly listed company, independence is required by the exchange in which they are listed.

(ISS) policy survey (2010) asked investors to rank corporate governance topics and found that investors in all markets ranked board independence as the most important. According to Sarbanes-Oxley (2002), a board member is considered independent if the director does not receive compensation from consulting, advisory, or other services apart from service on the board and is not considered an affiliate of the company or any of its subsidiaries.⁴ Exchanges have specified to great length the types of relationships that are prohibited for nominating committee members with the expressed hope that eliminating these types of relationships will help prevent impaired judgments by board members and make the nomination process more objective and independent from the CEO.

Researchers have argued that these regulations overlook independence concerns stemming from social relationships between management and directors. Directors who meet the independence criteria of the regulations are said to be independent “on paper,” but because of other social relationships, these directors may not be independent in fact (Clune et al. 2014). Some of these relationships are connections through previous employment, education, or extracurricular organizations and are shown to be correlated with reductions in firm value (Fracassi and Tate 2012), earnings management (Krishnan et al., 2011), and financial reporting quality (Dey and Liu 2010). Sarbanes-Oxley (2002) and exchange listing requirements (NYSE 303A, Nasdaq 5601) have helped change the composition of boards of directors over time through independence “on paper” improvements, but the concerns regarding independence from social and professional relationships remain.

⁴ An affiliate relationship is not specifically defined. The NYSE requires that each board broadly considers all relevant factors in determining independence from management and to consider all issues from both the standpoint of the director and the person or organization with whom there is a relationship to determine whether this relationship might impair the ability of the director to make independent judgments about management or the listed company.

The independence requirements do not preclude CEO involvement in the board nomination process. In 1989, while nominating committees were still on the rise, Lorsh and MacIver (1989) interviewed approximately 80 board members and found that, while 84% of board members had nominating committees on their board, shareholders “were obviously not involved until the election phase, and even at this point, their impact is negligible.” The interviews revealed that the CEOs still had more relative power in the boardroom over nominations than did nominating committees, with each having separate duties concerning nominations. The CEO was responsible for identifying candidates while the nominating committee performed the evaluations of the candidates and *formally* nominated them. This division of duties highlights some potential concerns with the new disclosure requirements for the source of board member nomination because disclosure may not accurately reflect whether the CEO or the nominating committee is in fact responsible for the initial nomination of board members.

In a more recent study, Clune et al. (2014) interview 20 fully independent directors who sit on nominating committees and find that the CEO’s role in the nominating process is now highly variable. In some companies, the CEOs have absolute control over the nominating process, while in other companies, the CEO has as much input as any other director on the board, and in still other companies, the CEOs provide little to no input. Thus, the current independence requirements have not ensured more independent and objective nominations.

Several archival research studies have examined independence concerns between management and directors resulting from relationships not addressed by legislation, but little has been done to investigate how board *processes* might impair independence. One concern relates to the processes used to nominate new directors to the board. With the wide variation in nominating committee processes, described earlier, it is difficult to use field data to isolate the effect of CEO

influence in the selection process (Callahan et al. 2003). Only a few studies have attempted to address the effects of CEO control over the appointment of new directors. Shivdasani and Yermack (1999) find that CEO involvement in the director selection process results in the nomination of directors that are less independent on paper. They use CEO presence on the nominating committee and lack of a nominating committee as evidence of CEO involvement. Carcello et al. (2011) find some evidence that CEO involvement in the nominating process leads to a reduction in audit committee effectiveness. Westphal and Zajac (1995) examine how CEO versus board power affects new director selection. They find that when the CEO (board) has relatively more power than the board (CEO), new director nominees have characteristics similar to the party with more power. In contrast, Lisic et al. (2016) find no evidence that CEO involvement in the director selection process yields any changes in internal control weaknesses, a proxy for audit committee effectiveness, when CEO power is included in their model.⁵

The focus of the archival research described above has been to determine whether CEO influence over the nomination process yields nominations of directors with other social ties to the CEO, even though they may appear to be independent “on paper.” To my knowledge, no research to date has focused on how the nominating process itself could decrease independence by creating an environment in which the CEO’s act of nominating causes the new director to feel obligated to reciprocate the CEO’s support in the nomination process.

⁵ The variable for CEO power is based on a summary index including multiple measures of CEO influence and power within the company, including role as chairman of the board, higher relative compensation, tenure, expertise, number of years within the company, etc. The reason audit committee effectiveness is used as the dependent variable by Lisic et al. (2016) and Carcello et al. (2011) is that previous research finds a positive relationship between independent audit committees and audit committee effectiveness.

3.3 The Social Norm of Reciprocity

Jay Lorsch, a Harvard professor who interviewed over 80 board members, said of the relationship between the CEO and the board of directors, “It is no exaggeration to say that many directors are beholden to the CEO for their position, when they are in fact supposed to be monitoring the CEO's performance/position (Lorsch and Young, 1990).” Research on the social norm of reciprocity shows that when one party behaves in a way that directly benefits a second party, the second party feels a moral obligation to reciprocate in a manner that will benefit the first party (Gouldner, 1960; Fehr et al, 1998, Berg et al., 1995; McCabe et al., 1996). Research on this psychological phenomenon shows it to be prevalent across generations, social groups, and cultures (Sutter and Kocher, 2006; Kugler et al., 2007; Gächter and Herrmann, 2009), which indicates that even experienced board members are likely to engage in reciprocal behavior.

Appointment to a board of directors increases the new member's income through a direct salary from the company and through reputation effects, which may result in additional directorship opportunities at other companies. These positive effects on the new directors' income are likely to induce a sense of obligation to behave reciprocally toward the party who nominated them to their new position. Although nominations to a board of directors can come from various sources, two prominent nominating sources are the CEO and shareholders.⁶ For a board member to behave reciprocally toward the CEO or shareholders for nominating them, they must know who nominated them to the board. Discussions with compensation consultants at Pay Governance,

⁶ In addition to CEO and shareholder nominations, board members are also sometimes nominated by other sources such as current board members or search firms (PwC, 2016).

LLC., who work closely with CEOs and board members, confirmed that board members typically know who nominated them to the board.

3.4 Board Member Discretion Over Clawback Decisions

There are numerous ways board members could reciprocate to the CEO or shareholders because board members have discretion over CEO compensation. One compensation issue that has received increasing attention in recent years is the clawback of executive compensation. A clawback is the recovery of compensation that was previously paid to an employee, usually as defined by the company's clawback policy. Though clawback policies stipulate the conditions under which employees are subject to a *potential* clawback, board members have discretion over the actual decision to claw back. As of 2016, approximately 92% of S&P 500 firms disclose a clawback policy. Approximately 50% of these firms have company policies stipulating that financial restatements can trigger the company's clawback process, which is then subject to board member discretion (Equilar Executive Compensation & Governance Outlook, 2017). Given board members' discretion over the clawback decision, this is an ideal setting in which to study whether board members behave reciprocally toward those who nominate them to the board.

The SEC recently addressed board member discretion over clawback decisions as part of the implementation of the Dodd-Frank Act (2010). In July 2015, the Commission proposed new requirements that, if approved, would require companies to claw back incentive-based executive compensation whenever a financial restatement of a prior year's financial statements led to

erroneously awarded compensation. Enacting this proposal would largely eliminate board discretion over whether to claw back compensation and how much to recover.⁷

The SEC's five Commissioners voted 3-2 in favor of formally proposing the changes in clawback policies described above (Proposal Rule 10D-1) and opened discussion on the proposal for public commentary as of July 1, 2015. The SEC closed the window for public commentary on September 14, 2015, but has yet to either revise or vote on adoption of the proposal. Regardless of their position on the proposal, all Commissioners agreed that the primary concern and underlying motivation for any clawback policy should be to protect shareholder interests. In a statement about the new clawback proposal, SEC Chairwoman Mary Jo White, who voted in favor of the proposal, stated that the new rules would "result in increased accountability and greater focus on the quality of financial reporting, which will benefit investors and the market (Eavis, 2015)." Luis A. Aguilar, another Commissioner who voted for the proposal, argued that the purpose of incentive compensation, which is to align management and shareholder interests, is not achieved when erroneously awarded incentive compensation is not clawed back. Finally, Kara Stein, the third SEC Commissioner in favor of the proposal, stated that, "investors should not be left holding the bag while executives reap benefits when reporting false financial results (Ackerman, 2015 The Wall Street Journal/Stein, 2015)." Her statement highlights how shareholders are hurt financially when boards decide not to claw back erroneously awarded compensation from management.

⁷ Proposal Rule 10D-1 (2015) would allow boards to continue applying discretion when the cost of implementing the clawback is greater than the amount of compensation being recovered or when the "award (subject to the clawback) is based on both the achievement of a financial reporting measure and the application of discretion by the compensation committee (Covington Report, 2015)." The SEC provides additional guidance for how to calculate the amount of the clawback in this instance: the amount of compensation based on the financial reporting method is recalculated with the restated financial results and then the discretion originally applied in the compensation decision is taken into account to determine the amount of the award the executive should have received. The difference between the amount the executive should have received is deducted from the amount actually received and is the amount the company is required to claw back.

Shareholders benefit from clawing back erroneously awarded compensation because the recouped amount lowers the firm's compensation expense, which increases the firm's and, therefore, the shareholders' wealth. In contrast, not clawing back erroneously awarded compensation allows the CEO and/or other executive(s) to keep the compensation at the expense of the shareholders.

The dissenting Commissioners, Daniel M. Gallagher and Michael S. Piwowar, also believe that clawback policies should protect shareholders, but are nevertheless reluctant to eliminate board discretion. They believe that eliminating board discretion is either: 1) unnecessary or 2) would hurt shareholders. Commissioner Gallagher argued that directors should keep broad discretion over the clawback decision process because “good corporate boards are tools for shareholder protection.”⁸ Gallagher believes it is unnecessary, arguing that removing board discretion “reflects a view that a corporate board is the enemy of the shareholder, not to be trusted to do the right thing (Gallagher, 2015).” He believes that the new policy's requirement for disclosure of compensation committee decisions not to claw back allows shareholders to vote out directors who do not use their discretion in the best interest of the shareholders, thus suggesting it is unnecessary to remove board members' discretion. However, some anecdotal evidence suggests that shareholders for many firms may not or cannot effectively use their vote in this manner.⁹

⁸ Commissioner Gallagher believes board members should be able to decide whether to implement a clawback, whether to recover compensation less than the full amount subject to the clawback policy, whether there should be a de minimus amount that is not worth pursuing, and whether to settle a clawback through alternative methods. Alternative methods are to be used for instances where the executive does not have the cash to return the unearned compensation immediately. For example, the board could withhold future pay.

⁹ Contrary to this argument, both Mylan and Wells Fargo are recent examples of board members keeping their positions despite low shareholder approval. Thus, shareholders are not always able to protect themselves from board members who do not act in the shareholders' best interest. In June 2017, more than half of Mylan's shareholders voted against Wendy Cameron, a board member who chaired the compensation committee and oversaw the excessive compensation payout in 2016 to former Robert Coury, despite the effect the company's epi-pen scandal had on stock price that year. Despite having the majority vote, shareholders who voted against Cameron's re-election were unsuccessful in removing her because Mylan's company policy requires two-thirds vote against re-election of board members. Wells Fargo board members Stephen W. Sanger and Enrique Hernandez Jr. received only 56% and 53% of shareholder votes, respectively – a very low tally. Chairman Sanger responded that the large number of shareholder

Commissioner Piwowar’s expressed concern is that the proposed policies would have unintended, negative consequences for shareholders (Piwowar 2015). Although he believes that “a properly designed clawback rule could yield real benefits to shareholders,” he indicated he could not support the current proposal because of the potential for substantial legal costs to reclaim CEO compensation and the potential increase in executive salaries that could result from imposing additional risk on executives.¹⁰ Thus, both Gallagher’s and Piwowar’s dissenting statements emphasize reasons why the proposed clawback regulation would not help investors, despite the Commission’s goal of protecting them.

In summary, the subject of debate among the Commissioners is not about whether to establish requirements for clawback policies, but rather about the specifics of how, and whether, those policies protect investors. One purpose of my study is to help inform the continuing debate on Proposal Rule 10D-1 by providing insight into how board members use their discretion in a clawback setting. In addition, by testing the effects on clawback decisions of CEO versus shareholder involvement in the nominating process, I provide evidence on how the nominating source relates to the SEC’s concerns regarding board discretion on clawback policies. Specifically, if shareholder versus CEO nomination of board members results in different director clawback decisions, this could provide insight for regulators’ policy decisions. That is, if shareholder nominations result in higher clawbacks than when the CEO nominates, then a policy that allows

votes against them were meant as a rebuke for the whole board, rather than individual members and that no board members planned to resign as a result of the vote (Cowley, 2017).

¹⁰ Commission Piwowar believes that managers, when confronted with higher risk of losing the incentive compensation component of their pay, will demand higher pay to make up for the increased risk. He refers to the substantial increase in executive pay after Section 162(m) in the Internal Revenue Code was enacted as an example of this unintended consequence.

shareholder nominations could mitigate concerns about board discretion in clawback decisions since it increases shareholder value.

3.5 Cognitive Dissonance

Not all situations that could potentially trigger a board member's sense of obligation are likely to result in reciprocal behavior. Reciprocity is only one possible obligation of board members. In the context of a potential clawback, board members will also feel a strong sense of obligation to the shareholders because the board bears primary responsibility for protecting shareholder interests. When shareholders nominate the board member, these two obligations influence board member decisions in a *consistent* direction, i.e. to clawback erroneously awarded compensation. However, when the CEO nominates the board member, the obligations are *competing* and cannot both be fulfilled simultaneously. That is, board members cannot both behave reciprocally to the CEO by choosing not to claw back compensation, and simultaneously protect shareholders by clawing back compensation from the CEO.

When board members face competing obligations, i.e. when the CEO nominates them, the board members will need to violate one of their perceived obligations. Prior research finds that awareness of such a violation results in feelings of psychological discomfort, known as cognitive dissonance (Sloane, 1944; Festinger, 1957, Aronson, 1969, Higgins, 1989). Cognitive dissonance occurs when individuals are aware of inconsistencies between their actions and beliefs. They seek to reduce or eliminate the discomfort they feel by changing either their beliefs or their actions, searching for and acquiring additional information that will support their desired decision, or reducing the importance of the inconsistent belief or action (Festinger, 1957).

Though individuals can change their opinions or beliefs to some extent, they are constrained by their ability to construct a reasonable and believable argument to convince themselves of the desired conclusion (Petty & Cacioppo, 1986; Kunda, 1990; Brown, 2014). Because the view that a board member's primary responsibility is to represent shareholders is widely held (Demb and Neubauer, 1992), board members will need to justify any action that is not consistent with shareholders' interests. When shareholders nominate a board member, the board member's reciprocal obligation to the shareholders is consistent with their obligation to act in the best interest of shareholders. Thus, the board members will not experience cognitive dissonance. However, when the CEO nominates the board member, s/he will need to find a reasonable justification for not clawing back compensation in order to behave reciprocally toward the CEO. If the board member cannot come up with a reasonable justification for not clawing back, s/he will be more likely to claw back the CEO's compensation.

In the context of my study, when board members are more certain about their expected duty to shareholders (i.e. when the clawback decision is more clear-cut), they will find it difficult to justify acting reciprocally toward the CEO. Shareholder interests are more likely to be clear-cut when the company has a large restatement that misses the incentive compensation target by a large amount. For example, if the company restates earnings, and the restated amount then misses the target amount for incentive compensation by a large amount, board members would be more sure that shareholders would expect them to claw back the erroneously awarded compensation from the CEO.

In contrast, when the restated earnings amount misses the incentive compensation target by a smaller amount, board members will be less sure about shareholder expectations over the decision to claw back. In such cases, because shareholders' expectations regarding the clawback

are ambiguous, board members who wish to behave reciprocally toward the CEO or shareholders can more easily justify reciprocal behavior. Thus, when board members do not have a clear understanding of which decision is in the best interest of shareholders, I expect that the decision to claw back will vary depending on who nominated them to the board. Clawing back compensation from the CEO will result in the same financial benefit to shareholders, regardless of who nominates the board member. However, when the CEO is the nominating party, board members can rationalize that, for example, the CEO was close enough to getting the incentive compensation that it would be unfair to claw back or that the impact of this decision on shareholders is small enough that it will not matter to them. In contrast, when shareholders nominate, the board members might place more emphasis on the financial benefit to shareholders of clawing back compensation from the CEO. As a result, the effect of reciprocity on board member decisions to claw back will be greater when the decision to claw back is ambiguous than when the decision to claw back is clear-cut.

Therefore, my hypotheses are:

H1: Board members will claw back less when the CEO nominates the board member than when shareholders nominate the board member.

H2: Board members will claw back less when the earnings miss the target by a small amount than by a large amount.

H3: The difference in board members' clawback decisions when shareholders nominate them versus when the CEO nominates them will be larger when earnings miss the target by a small amount than when earnings miss the target by a large amount.

4.0 Research Method

4.1 Chapter Overview

Chapter 4 describes my research method. Section 4.2 describes the participants and explains how they were recruited. Section 4.3 describes the design of my experiment. The procedures I use to test my hypotheses are explained in Section 4.4. Sections 4.5 and 4.6 describe my dependent variables and the information collected in the post-experimental questionnaire, respectively.

4.2 Participants

Participants are 112 board members of public, private, and not-for-profit US companies. They average 54 years of age, have an average of 32 years of business experience, and 84% are male. Because there is a small population of board members and because many of them serve on several boards of different types of firms, no board members were excluded from participating in my study. Approximately 33% of participants have served on public boards and 21% of participants have served on only not-for-profit boards. Participants were recruited through networking. Emails were sent to individuals in this network, who then forwarded my email to potential participants (See Appendix B for the recruitment message). Board members who agreed to participate accessed the study through a link provided in the email, which took them to an online

platform in Qualtrics. As payment for their participation, participants chose either a \$25 Amazon gift card or a \$25 donation to a charity.

4.3 Design

I test my hypotheses by using a 3 (Nomination Source) x 2 (Restatement Size) full factorial design. I manipulated Nomination Source by telling participants that they have been nominated to a firm's board of directors by either the CEO, a group of shareholders, or a head-hunting firm. In the CEO Nomination condition, participants are told that the CEO, who has no prior personal relationship with them, nominated them to fill a vacant position on the board. In the Shareholder Nomination condition, a group of large investors who jointly own a significant portion of the shares of the company nominated them for the vacant position. In the Head-Hunting Firm Nomination condition, a third-party head-hunting firm who submits names to the company for new board members nominates the participant. I vary the nominating source such that the obligation to reciprocate either competes with (i.e., CEO Nomination) or is consistent with (i.e., Shareholder Nomination) the obligation to protect shareholder interests. The Head-Hunting Firm Nomination condition serves as a baseline in which participants cannot act reciprocally toward the nominating source. This baseline condition is used to determine whether board members' clawback decisions in the CEO Nomination and Shareholder Nomination conditions differ from those of board members who have no reason, apart from the universal obligation to shareholders, to act reciprocally toward either the CEO or the shareholders.

The Restatement Size manipulation varies the degree to which board members can plausibly justify not clawing back, and has two levels, Large and Small. In the Large Restatement

condition, the restated earnings amount falls below the earnings target by a large amount. Specifically, in the Large Restatement condition, restated earnings drop more than 20% below the earnings target. I chose this amount based on interviews with compensation consultants of Fortune 500 companies and board members who were not participants in the study.¹¹ In the Small Restatement condition, the restated earnings amount is only about 5% below the earnings target. Based on interviews with the parties mentioned above, I chose the amount of the restatement in the Small Restatement condition such that board members would be less certain about whether, and how much, they should claw back from the CEO. (See Appendix C for the wording used in the manipulations in my experiment.)

4.4 Procedures

The flowchart in Figure 1 shows the steps in the experiment. Participants have access to all materials in all phases of the experiment except when responding to the manipulation check questions. Participants are prevented from revisiting previous pages or changing answers provided previously.

¹¹ Compensation consultants and board members corroborated (independently of each other) that when CEOs achieve 80% or more of the incentive benchmark, they often receive at least some portion of contracted incentive compensation. Thus, if the CEO almost meets the earnings target, it is often the case that he/she receives almost the full amount of contracted incentive compensation for meeting the target. However, if earnings fall below the contracted range, the CEO does not earn any incentive compensation.

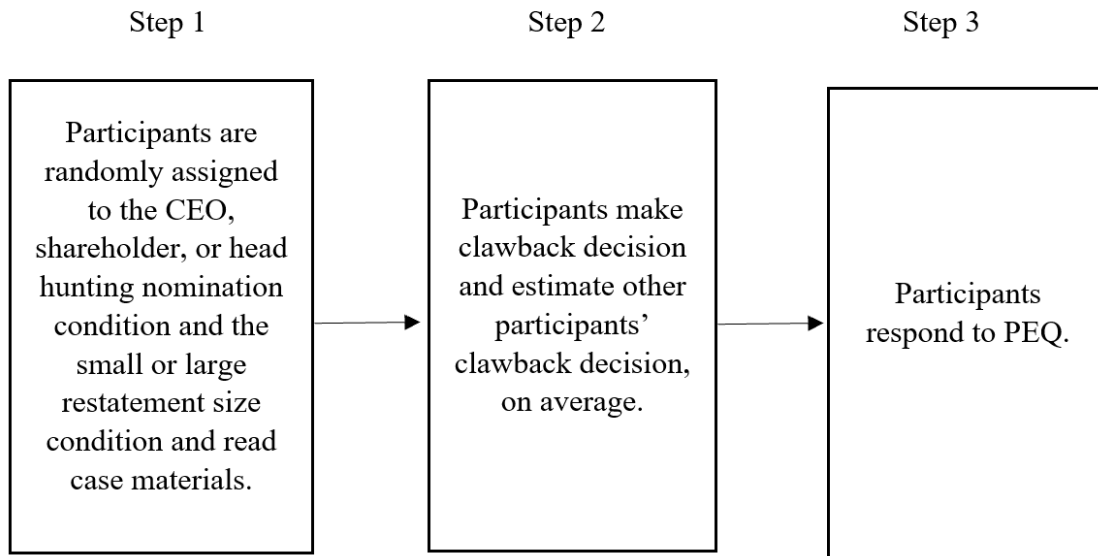


Figure 1 Flowchart of Experimental Design

In step 1, participants read a hypothetical scenario describing their appointment to a board of directors. They assume the role of a newly-elected board member at a children’s clothing company named Molly Coddle, Inc. My main manipulations are operationalized in this step. The first manipulation is Nomination Source. As explained above, participants are told that they were nominated by the CEO, a head-hunting firm, or a group of shareholders. In all cases, they are informed that they have no prior affiliation or relationship with the nominating party. Participants are then given information about the compensation paid to the CEO last year and the performance measures used for the incentive-based part of that compensation. Specifically, the CEO received \$7 million in incentive compensation, of which \$4.5 million was awarded based on exceeding a target net income of \$945 million.

Participants are also given the firm’s clawback policy for managers. The clawback policy used in the experiment is adapted from Johnson & Johnson’s (J&J’s) clawback policy (see

Appendix C for J&J's full clawback policy). The policy used in the experiment states that clawbacks of managerial compensation will be made on a no-fault basis, meaning that no misconduct is required for recovery of compensation. It also states that board members have full discretion over whether, and to what extent, the clawback policy will be enforced. Additionally, to highlight to participants the impact that a clawback has on shareholders, the policy states that any amount clawed back will be distributed as a dividend to shareholders, including board members. However, any manager whose compensation is clawed back cannot benefit from any dividends to shareholders as a result of the clawback. Thus, clawbacks would directly benefit shareholders of the company and not clawing back would directly benefit the CEO at the expense of shareholders.

Participants are told that this year's audit uncovered an overstatement of the prior year's inventory and that it is unclear whether the misstatement was intentional. As a result, the financial statements were restated, which decreased last year's net income below the earnings target used to award the CEO's incentive compensation for the previous year. My second manipulation, Restatement Size, varies whether restated earnings falls 20% or 5% below the earnings target.

In step 2, participants' task is to decide how much, if any, of last year's incentive compensation to claw back from the CEO. They are asked to provide an amount, from none to the full amount of incentive compensation paid to the CEO for meeting the earnings target (\$4.5 million), that they would recommend clawing back from the CEO. Appendix D provides the exact wording used in the experiment for all of the manipulations and the wording for the dependent variable.

In Step 3, participants respond to the PEQ. The PEQ includes: 1) manipulation check questions, 2) questions relating to the scenario, including participants' estimate of the average of

other board members' responses which I use as an alternative dependent variable, and 3) questions about clawbacks generally. (See Section 4.6 Post-Experiment Questionnaire for specific questions asked in each of these categories.)

4.5 Dependent Variables

Board member participants are asked to recommend an amount to claw back from the CEO. I use Own Clawback Percentage, which is the percentage of the compensation they choose to claw back (the amount of compensation the board member chose to clawback divided by \$4.5 million, the total amount of incentive compensation that could have been clawed back), as my initial dependent variable.

Because my initial dependent variable is a self-reported measure, there is potential for bias in participants' responses. As mentioned earlier, social desirability bias is the tendency of individuals to under-report socially undesirable behavior and to over-report socially desirable behavior. Prior research shows that there are two distinct causes for this misreporting behavior: impression management and self-deception (Zerbe and Paulhus, 1987). Individuals engaging in impression management report that they adhere to socially desired behavior despite consciously knowing they would not, or do not, actually behave that way in an attempt to improve how others view them. Individuals engaging in self-deception truly believe they would act ethically and are not aware of their bias. Self-deception protects individuals' self-esteem and, in general, allows them to believe they are more ethical than others (Randall and Fernandes, 1992). My study is not designed to distinguish between these behaviors. Rather, my goal is to measure whether social desirability bias is present in participant responses.

If participants perceive that clawing back a greater amount is the socially desired response, and they are subject to social desirability bias, they would over-report the amount they would claw back (Paulhus, 1984; Randall and Fernandes, 1991; Tourangeau and Yan, 2007). In contrast, board members might believe it is appropriate to claw back a certain amount, but are concerned about the potential unintended future costs to shareholders of doing so. These potential costs, as discussed in Section 3.4, include legal fees or future increases in CEO salaries to compensate for increased risk (Piwovar, 2015). These practical concerns could reduce the amount of compensation board members are willing to claw back from the CEO.

In anticipation of the potential for social desirability bias to influence participant responses, I collected the necessary information to determine whether social desirability bias is present and collected participant responses for an alternative dependent variable. I discuss these measures below when describing the PEQ.

4.6 Post-Experiment Questionnaire (PEQ)

The first category of questions in the PEQ is manipulation check questions. Board member participants answer two questions related to information in the scenario to assess their understanding of the case materials. First, they are asked who nominated them to the board. Next, participants are asked about the CEO's involvement in the inflated inventory from the prior period. This second question is used to ensure that participants understand that it was unclear in the case whether the CEO intentionally overstated the inventory because beliefs regarding the CEO's role in the overstatement could influence participants' clawback responses. Specifically, participants were asked "Which of the following reflects what was explained in the case materials?"

Participants could choose from the following answers: 1) it was unclear whether the overstatement was intentional, 2) the CEO intentionally inflated net income, or 3) the restatement was due to an unintentional error. The first response is the correct response.

After answering the manipulation check questions, participants respond to questions designed to measure whether social desirability influences their responses and to provide an alternative dependent variable in case their responses reflect social desirability bias. I ask participants:

1. Disregarding practical considerations, what do you believe as an individual is the right amount to claw back from the CEO?
2. Other board members were also asked what amount they would recommend clawing back from the CEO. What is your estimate of their answer, on average?

If board members' responses exhibit social desirability bias, the amount they say they would claw back should be similar to their answer regarding the right amount to claw back. Prior ethics research has used questions eliciting participants' beliefs about what others do as a way of overcoming the hurdles of impression management and self-deception in social desirability bias (Jurgenson, 1978; Cohen, 1998, 2001). Therefore, in question 2, I ask board members to estimate the average of other board member participants' clawback decisions, and I use an approach common in behavioral economics research (Babcock and Lowenstein, 1997) to incentivize them to estimate correctly by offering an additional \$5, either for themselves or for charity, if they estimate within \$.5 million of the correct answer. Because I find that participants engage in social desirability bias in their own clawback decision, I use participants' response in Question 2, Others' Clawback Percentage, as an alternative dependent variable.

In addition to these questions, participants respond to questions about the motives or beliefs that affected their clawback decisions during the experiment and questions designed to determine how board members might justify those decisions. Specifically, there are questions regarding the perceived impact on shareholders of clawing back incentive compensation, the extent to which the board member believes the CEO is responsible for the restatement, whether board members are reluctant to take away compensation as opposed to not providing the compensation in the first place (loss aversion), and the extent to which the clawback policy is fair to the CEO and to shareholders. I also ask for open-ended responses regarding any formula participants may have used to decide on the amount of clawback to recommend and why they did or did not feel obligated to the CEO. Finally, participants responded to a series of survey questions. These questions and their related results are described later in Chapter 6.

5.0 Results for my Experiment

5.1 Chapter Overview

Chapter 5 describes the results of my experiment. Section 5.2 reports the results for participants' responses to the manipulations checks. Section 5.3 checks the assumptions of the data for use in ANOVAs. Section 5.4 reports the results of tests of my hypotheses. Section 5.5 provides supplemental analysis of the data when I include the Head-Hunting Firm Nomination condition.

5.2 Manipulation Checks

Because board members could not show reciprocity unless they knew who nominated them to the board, I ask participants to indicate who nominated them. Specifically, participants answer the following question: "In the scenario you just read, who nominated you to the board of directors for Molly Coddle, Inc.?" Their choices are: the CEO, a head-hunting firm, or a group of investors, and the correct response depends on the condition to which they were randomly assigned. Of the 112 participants, seven board members failed the nomination manipulation check (93.75% passed the manipulation check).¹² I omit these seven participants and perform all statistical tests using only the responses of board members who passed the nomination manipulation check.

¹² All 7 participants who failed the manipulation check had previously accessed the study without completing it. It seems that these participants began the study on their mobile phone (which is cumbersome) and then switched to a different device. When they switched devices, they were assigned to a different treatment condition, but did not realize it because they continued the study where they had left off (i.e., after the treatment condition manipulation was mentioned). The evidence supports this understanding of what occurred (based on reading times on subparts of the

The second manipulation check asked participants whether Molly Coddle, Inc.'s restatement was due to error, fraud, or whether it was unclear. This question was meant to measure whether participants understood that the experimental instrument was unclear about the CEO's intentions. Eleven participants responded incorrectly, with nine responding that the misstatement was due to an error and two responding it was due to fraud. These 11 participants appear to have misinterpreted this question as asking for their opinion about whether the misstatement was due to fraud or error. In the PEQ I include a more direct measure of participants' beliefs about the CEO's responsibility for the misstatement (see Section 5.4.1.1), so I do not use the answers to this second manipulation check question as a screen and do not omit any participants based on responses to this second manipulation check.

5.3 Assumptions

I use independent t-tests and two-way ANOVAs to test my hypotheses. I first check the assumptions for these statistical tests to ensure there are no violations that could raise concerns about their use. The following assumptions are met by experimental design: 1) the dependent variable is measured on a continuous scale, 2) the independent variable comprises two categorical, independent groups, and 3) observations are independent. However, I test the following assumptions that relate to the data: 1) no significant outliers, 2) homogeneity of variances, and 3)

task, etc.) and indicates that all 7 participants correctly identified the nomination party associated with their first attempt at completing the study.

normally distributed dependent variables. See Appendix A for a list of all variables used in the study and their definitions.

The initial dependent variable used in my analysis is Own Clawback Percentage, which is the percentage of total possible clawback that the participant indicated they would claw back (i.e., the actual amount of incentive compensation clawed back divided by the total amount of incentive compensation that could have been clawed back). As explained more fully later, I also use Others' Clawback Percentage and Others' Clawback - Dichotomous as alternative dependent variables in my analysis. Others' Clawback Percentage is board members' estimate of the average clawback response of other board members in the same treatment condition divided by the total amount of incentive compensation that could have been clawed back. Others' Clawback - Dichotomous is measured as whether participants believed other board members would (Yes) or would not (No), on average, claw back the *full amount* of the CEO's compensation allowed by the clawback policy.

To check for possible outliers, I visually examined a scatter plot and tables listing frequency of responses and extreme values and did not identify any outliers. I use Levene's test to determine that the assumption for homogeneity of variances was not violated. To test the assumption of normality, I first checked the data visually. Because the data appeared to be heavily skewed, I also performed the Shapiro-Wilks test and found that the assumption of normality was violated for both Own Clawback Percentage ($z = 5.84, p < .001$) and Others' Clawback Percentage ($z = 2.61, p < .01$). Although I primarily test my hypotheses using ANOVAs, which are fairly robust to violations of normality, I also conduct non-parametric statistical tests to determine whether the violation of normality influenced my conclusions. I found no important cases in which the non-parametric tests resulted in different conclusions from the standard parametric tests, and therefore I only report the results of the parametric tests in the analysis that follows.

5.4 Tests of Hypotheses

5.4.1 Tests of Hypotheses Using the Initial Dependent Variable: Board Members' Own Clawback Percentage

H1 predicts a main effect of Nomination Source on the clawback decision and H2 predicts a main effect of Restatement Size on the clawback decision. H3 predicts an ordinal interaction of Nomination Source and Restatement Size on the clawback decision because I expect board members to find it more difficult to justify acting reciprocally toward the CEO when there is a large restatement. Figure 2 illustrates the nature of the predicted interaction.

In tests of my hypotheses, I use only the CEO and Shareholder Nomination condition data and do not yet include the data from board members in the Head-Hunting Firm Nomination condition. The Head-Hunting Firm Nomination condition is not relevant for my hypotheses tests because my hypotheses involve reciprocal behavior, but participants' clawback decisions in the Head-Hunting Firm Nomination condition could not reciprocate the head-hunting firm that nominated them. The Supplementary Analysis in Section 5.5 uses participant responses from the Head-Hunting Firm Nomination condition as a baseline against which to compare the CEO and Shareholder Nomination conditions.

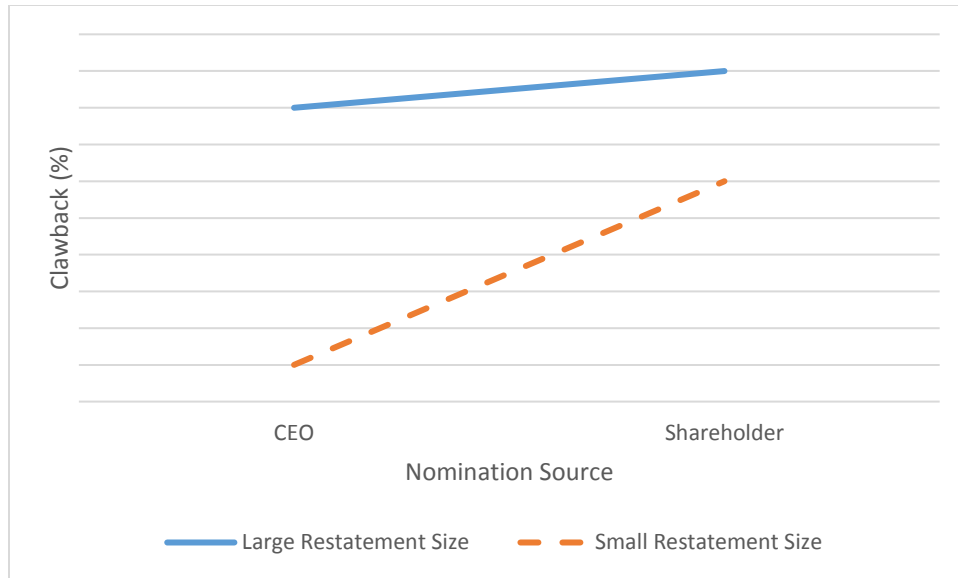


Figure 2 Predicted Interaction of Nomination Source and Restatement Size on Board Members' Clawback Decision

5.4.1.1 Hypothesis H3

I begin by testing H3 because it predicts an interaction of Nomination Source and Restatement Size. The related results are reported in Table 1 and depicted in Figure 3. I first examine whether the difference in the clawback amounts in the Shareholder Nomination versus CEO Nomination conditions is larger when the CEO misses the earnings target by a smaller amount. Table 1, Panel A presents the relevant means and Panel B presents the results of the two-way ANOVA using participants' clawback percentage, Own Clawback Percentage, as the dependent variable. The independent variables are Nomination Source, with the two levels being CEO Nomination and Shareholder Nomination, and Restatement Size, with the two levels being

Large and Small. The interaction in the ANOVA is not significant ($F = .18, p = .67$), which is not consistent with H3.

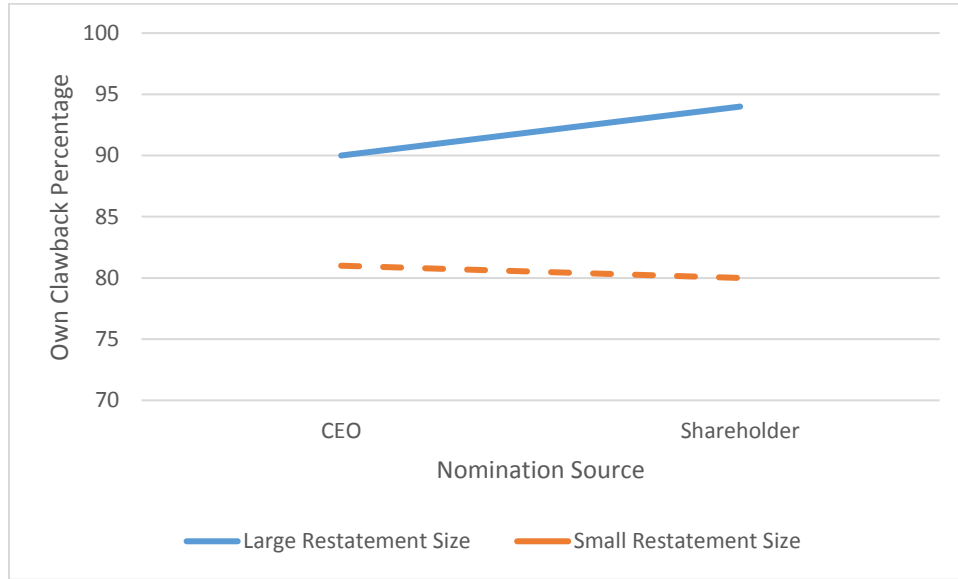


Figure 3 Observed Effects of Nomination Source and Restatement Size on Board Members' Clawback Decision

Recall that the reason for the interaction predicted in H3 is that when there is a large restatement, the obligation to shareholders is expected to increase in saliency. When there is a smaller restatement, it was expected that it would be less clear to board members that shareholders expect them to claw back the incentive compensation. In this circumstance, board members were expected to experience greater cognitive dissonance because of their competing perceived obligations to reciprocate to the CEO and their obligation to shareholders, making it easier to justify clawing back less from the CEO. In contrast, the large restatement was expected to make the obligation to shareholders more salient, making it difficult for a board member nominated by the CEO to justify clawing back less. Thus, I collected several measures to test participants'

potential perceived justifications for clawing back less from the CEO. Specifically, I test the extent to which participants believed 1) the CEO was responsible for the restatement, 2) the clawback policy was fair to the CEO, and 3) the clawback policy was fair to shareholders. Table 1, Panel C shows the interaction term from the ANOVAs conducted using each of these justification measures as the dependent variable and the same independent variables as used in the analysis reported in Panel B. The fact that none of these interaction terms is significant is consistent with not finding the predicted interaction for my initial dependent variable (Own Clawback Percentage). That is, because participants' justifications do not differ based on the size of the restatement, the percentage they clawback also does not differ based on this variable.

5.4.1.2 Hypothesis H1

Next, I analyze the predicted main effect of Nomination Source. H1 predicts that, due to reciprocity, board members who were nominated to the board by the CEO (mean = .86) will claw back less than board members who were nominated by shareholders (mean = .87). The ANOVA in Table 1, Panel B, shows that the main effect of Nominating Source on board members' clawback percentages (Own Clawback Percentage) is not significant ($F = .07$ $p = .74$).

As explained in Section 3.3, the reason for the predicted main effect of Nomination Source in H1 was that board members were expected to feel some level of obligation toward both the CEO and shareholders, but that those nominated by the CEO would feel a greater obligation to the CEO relative to those nominated by the shareholders. To test this reasoning, I conduct a planned comparison of whether the *difference* between board members' perceived obligation toward shareholders and toward the CEO (Obligation Toward Shareholders – Obligation Toward CEO) depends on who nominated them to the board. Table 1, Panel D shows that, consistent with not

finding the predicted difference for Own Clawback Percentage in H1, I also do not find a difference in the perceived obligation to the CEO versus shareholders ($t = .38$, $p = .35$).

5.4.1.3 Hypothesis H2

H2 predicts that board members will claw back more when the Restatement Size is large than when it is small. Table 1, Panel B presents the results of the related tests. Consistent with H2, I find that Restatement Size significantly influences participants' Own Clawback Percentage ($F = 3.74$, $p = .03$, one-tailed). As expected, board members clawed back more when there was a large restatement because the CEO missed the earnings target by a larger amount (mean = .92) than when the restatement was smaller because the CEO missed the target by a smaller amount (mean = .81).

In summary, I did not find any evidence of reciprocity or cognitive dissonance in participant responses using Own Clawback Percentage. I did find a main effect of restatement size on their willingness to claw back from the CEO, but nomination source did not influence their decision to claw back. Next, I test whether social desirability bias appears to have influenced participants' Own Clawback Percentage.

Table 1 Tests of Hypotheses about Nomination Source and Restatement Size

Panel A: Means (Standard Deviations) of Own Clawback Percentage^a

	Large Restatement ^a	Small Restatement ^a	Combined
CEO Nomination ^a	0.90 (0.20) n = 20	0.81 (0.32) n = 18	0.86 (0.26) n = 38
Shareholder Nomination ^a	0.94 (0.14) n = 18	0.80 (0.32) n = 19	0.87 (0.25) n = 37
Combined ^b	0.92 (0.17) n = 38	0.81 (0.31) n = 37	

^a Variable definitions are provided in Appendix A.

^b The Head-Hunting Firm Nomination condition is not used in this analysis because H1 tests for reciprocity. Participants in the Head-Hunting Firm Nomination condition cannot reciprocate toward the nominating party.

Panel B: ANOVA with Own Clawback Percentage as the Dependent Variable^a

	Partial SS	df	MS	F	p-value ^b
Model	5.15	3	1.72	1.31	0.28
Restatement Size ^a	4.89	1	4.89	3.74	0.03
Nomination Source ^a	0.10	1	0.10	0.07	0.39
Interaction of Restatement Size and Nomination Source	0.23	1	0.23	0.18	0.34

^a Variable definitions are provided in Appendix A.

^b Reported p-values are one-tailed to reflect the directional prediction of the effect.

Table 1 (Continued)

Panel C: ANOVAs with Same Independent Variables as in Panel B but Using the Various Justification Measures Underlying the Interaction Predicted in H3 as the Dependent Variable

Dependent Variable in the ANOVA	Interaction of Restatement Size and Nomination Source ^a	
	F	p-value
CEO Responsibility for Restatement ^a	0.06	0.80
Clawback Policy Fair to CEO ^a	2.35	0.13 ^b
Clawback Policy Fair to Shareholders ^a	0.18	0.67

^a Variable definitions are provided in Appendix A.

^b The means for participants' responses to the justification measure "Clawback Policy is Fair to CEO" are not in the predicted direction.

Panel D: T-test with Difference in Perceived Obligation to the Shareholders versus the CEO as the Dependent Variable, which Underlies the Reciprocity Prediction in H1, and Nomination Source as the Independent Variable^a

	t	p-value
(Obligation Toward Shareholders ^a) – (Obligation Toward CEO ^a)	0.38	0.35

^a Variable definitions are provided in Appendix A.

5.4.1.4 Tests for Social Desirability Bias

The results presented above are based on tests using a dependent variable that asks participants to report what they would do (Own Clawback Percentage). However, social desirability bias predicts that participants will report that they would do whatever they believe is the socially desirable thing to do (Edwards, 1953; Zerbe and Paulhus, 1987; Randall and Fernandes, 1991). I compare participants' clawback percentage to what they say is the right amount

to claw back if they ignored practical considerations (Ethical Clawback Percentage; see Section 4.5 for exact wording). This tests whether participants indicate that they do what they consider to be ethical. Table 2, Panel A presents the descriptive statistics for these variables.

When asked what amount they would claw back from the CEO, on average, participants responded that they would claw back 85% of the \$4.5 million in incentive compensation. When asked what participants believed was the right amount to claw back, disregarding practical considerations, board members responded that 83% of \$4.5 million was the right amount to claw back. Table 2, Panel B reports the results of the t-test comparing these two responses. I find that participants' responses to these two questions are not significantly different ($z = .67$, $p = .50$). Moreover, approximately 90% of participants provided identical responses to both the percentage they would claw back (Own Clawback Percentage) and the ethical amount to claw back (Ethical Clawback Percentage). These results are consistent with social desirability bias, which predicts board members will report that they would claw back the amount they believe is the socially desirable or ethical amount to claw back.

I also compare Own Clawback Percentage to participants' estimate of other board members' clawback percentage (Others' Clawback Percentage). The results of the t-test are reported in Table 2, Panel C. Participants believe other board members would claw back only 68% of the incentive compensation, on average, which is significantly lower than their own average clawback percentage of 85% ($z = 6.03$, $p < .01$). This finding is also consistent with social desirability bias because participants indicate that they would respond more ethically than other board members would. Recall that this could be true either because participants are engaging in impression management or because they believe that they act more ethically than others. My goal is not to differentiate between these possible explanations, but rather only to test for social

desirability bias. Because I find evidence consistent with social desirability bias influencing participants' responses, I repeat the hypotheses tests reported above for Own Clawback Percentage using board members' estimates of other board members' responses (Others' Clawback Percentage) as the dependent variable, which is an approach often used in prior ethics research (Jurgenson, 1978; Cohen, 1998, 2001).

Table 2 Tests for Social Desirability Bias

Panel A: Means (Standard Deviations) of Participants' Own Clawback Percentage, Participants' Belief about the Right (Ethical) Percentage to Claw Back, and Participants' Estimates of Other Board Members' Clawback Percentage

	CEO ^a	Head-Hunting Firm ^a	Shareholder ^a	Total ^b
Own Clawback Percentage ^a	.86 (.26)	.81 (.29)	.87 (.25)	.85 (.27)
Ethical Clawback Percentage ^a	.87 (.26)	.74 (.33)	.86 (.25)	.83 (.28)
Others' Clawback Percentage ^a	.64 (.29)	.68 (.30)	.72 (.3)	.68 (.29)

Panel B: T-test and Wilcoxon Signed Rank Tests

Comparison	t-test		Wilcoxon	
	t	p-value	z	p-value ^c
Own Clawback % = Ethical Clawback %	0.06	0.94	-0.018	0.99
Own Clawback % > Others' Clawback %	6.22	<0.001	5.498	<0.001

^a Variable definitions are provided in Appendix A.

^b All three Nomination Source conditions are used in this analysis.

^c Reported p-values are two-tailed due to a lack of predicted relationships. It was not clear whether board members would engage in social desirability bias, or whether their own clawback decisions were based on their ethical reasoning in addition to other practical considerations.

5.4.2 Tests of Hypotheses Using the Estimated Clawback Percentage of Other Board Members (Others' Clawback Percentage) as the Dependent Measure

5.4.2.1 Hypothesis H3

I repeat all of my tests of hypotheses using my second dependent measure, Others' Clawback Percentage, and report these results in the same order reported using my initial dependent measure, Own Clawback Percentage. Therefore, I begin by testing Hypothesis H3. I repeat the ANOVA used to test H3 earlier, except that I now use Others' Clawback Percentage as the dependent variable. The two independent variables are again Nominating Source and Restatement Size. Table 3, Panel A presents the related descriptive statistics and Figure 4 presents a visual depiction of the data. Consistent with my initial test of H3 using Own Clawback Percentage, the ANOVA in Table 3, Panel B again shows no significant interaction between Nominating Source and Restatement Size ($F = .00, p = .48$).

5.4.2.2 Hypothesis H1

I next test H1 using Others' Clawback Percentage as the dependent measure. I find a marginally significant main effect of Nominating Source ($F = 2.65, p = .11$, one-tailed), indicating that participants estimate that others will claw back less when they are nominated by the CEO (mean = .64) than when they are nominated by shareholders (mean = .72). This result is consistent with H1 if we assume that Others' Clawback Percentage is a better measure of what participants would actually do than Own Clawback Percentage, which appears to reflect social desirability bias.



Figure 4 Observed Effects of Nomination Source and Restatement Size on Participants' Estimate of Other Board Members' Clawback Decision

The combination of results using participants' own clawback percentage (Own Clawback Percentage) and their estimates of others' clawback percentage (Others' Clawback Percentage) provides potential insight into board members' clawback decisions. The results for Own Clawback Percentage indicate board members believe the socially desired response is to claw back a high percentage of the incentive compensation, regardless of who nominated them to the board. However, the results for Others' Clawback Percentage suggests that what they would actually do in this situation may differ from what they say they would do (Fisher, 1993) or that they believe

they are more ethical than other board members are. Regardless of the interpretation of the results for Others' Clawback Percentage, the combination of results suggests that on actual boards, the nominating source might influence board members' clawback decisions.

Although, as reported above, I find a marginally significant main effect of reciprocity using Others' Clawback Percentage as the dependent variable, I do not have any PEQ data to conduct a test of the mechanism underlying this main effect. Specifically, because I did not collect measures of participants' beliefs about other board members' feelings of obligation toward the CEO or shareholders, I am unable to determine the reason underlying my finding of reciprocity when I use Others' Clawback Percentage as the dependent variable.

5.4.2.3 Hypothesis H2

Next, I repeat my earlier tests of H2, except I use Others' Clawback Percentage as the dependent measure. H2 predicts that board members will claw back more when the size of the restatement is large than when it is small. The results of the related tests are reported in Table 3, Panel B. Consistent with H2, and with my earlier test of H2 using Own Clawback Percentage, I again find a significant main effect of Restatement Size. Specifically, participants' responses in the Large Restatement Size condition (mean = .73) are significantly higher ($F = 2.67, p = .05$) than in the Small Restatement Size condition (mean = .63).

Table 3 Tests of Hypotheses about Nomination Source and Restatement Size Using Others' Clawback Percentage as the Dependent Variable

Panel A: Means (Standard Deviations) of Others' Clawback Percentage^a

	Large Restatement ^a	Small Restatement ^a	Combined
CEO Nomination ^a	0.70 (0.29)	0.58 (0.28)	0.64 (0.29)
Shareholder Nomination ^a	0.78 (0.25)	0.67 (0.33)	0.72 (0.30)
Combined ^b	0.73 (0.27)	0.63 (0.31)	

^a Variable definitions are provided in Appendix A.

^b The Head-Hunting Firm Nomination condition is not used in this analysis because H1 tests for reciprocity. Participants in the Head-Hunting Firm Nomination condition cannot reciprocate toward the nominating party.

Panel B: ANOVA with Dependent Variable Others' Clawback Percentage^a

	Partial SS	df	MS	F	p-value ^b
Model	6.99	3	2.33	1.35	0.26
Restatement Size ^a	4.60	1	4.60	2.67	0.05
Nomination Source ^a	2.65	1	2.65	1.54	0.11
Interaction of Restatement Size and Nomination Source	0.00	1	0.00	0.00	0.48

^a Variable definitions are provided in Appendix A.

^b Reported p-values are one-tailed due to predicted relationships.

5.4.3 Tests of Hypotheses Using a Dichotomous Dependent Variable Based on Whether Participants Estimate that Other Board Members Will or Will Not Choose to Claw Back the Full Possible Clawback Amount

I also test my hypotheses using a dichotomous variable (Others' Clawback - Dichotomous) based on whether participants believed other board members would, on average, claw back the full amount of the CEO's compensation allowed by the clawback policy. I coded Others' Clawback - Dichotomous as 1 if participants estimated the average of other board members' clawback responses was the full clawback amount of \$4.5 million (i.e., the full amount of CEO compensation subject to the clawback), or as 0 if participants estimated that other board members would claw back less than the full \$4.5 million. I use \$4.5 million because over 70% of board members responded that the right amount to claw back (Ethical Clawback Percentage) was \$4.5 million, which is the full amount subject to the clawback policy. Table 4, Panel A provides the descriptive statistics for Ethical Clawback Percentage and Table 4, Panel B shows that Ethical Clawback Percentage does not vary by condition, meaning that the perceived right amount to clawback is not different based on Nomination Source or Restatement Size. Thus, in this analysis, I test whether participants believe that other board members will, on average, do what board members consider to be the right thing.

**Table 4 Tests to Determine the Perceived Ethical Amount of Clawback for Use in
Alternative Tests of Hypotheses**

Panel A: Means (Standard Deviations) of Ethical Clawback Percentage^a

	Large Restatement ^a	Small Restatement ^a	Combined
CEO Nomination ^a	0.85 (0.37)	0.67 (0.49)	0.76 (0.43)
Shareholder Nomination ^a	0.83 (0.38)	0.58 (0.51)	0.70 (0.46)
Combined ^b	0.84 (0.37)	0.62 (0.49)	

^a Variable definitions are provided in Appendix A.

^b The Head-Hunting Firm Nomination condition is not used in this analysis because H1 tests for reciprocity. Participants in the Head-Hunting Firm Nomination condition cannot reciprocate toward the nominating party.

Panel B: Log Linear Analysis with Dependent Variable Full (100%) Clawback^a

	IRR	z	p-value ^b
Restatement Size ^a	1.28	0.48	0.37
Nomination Source ^a	0.87	0.36	0.26
Interaction of Restatement Size And Nomination Source	1.13	0.62	0.41

^a Variable definitions are provided in Appendix A.

^b Reported p-values are one-tailed due to predicted relationships.

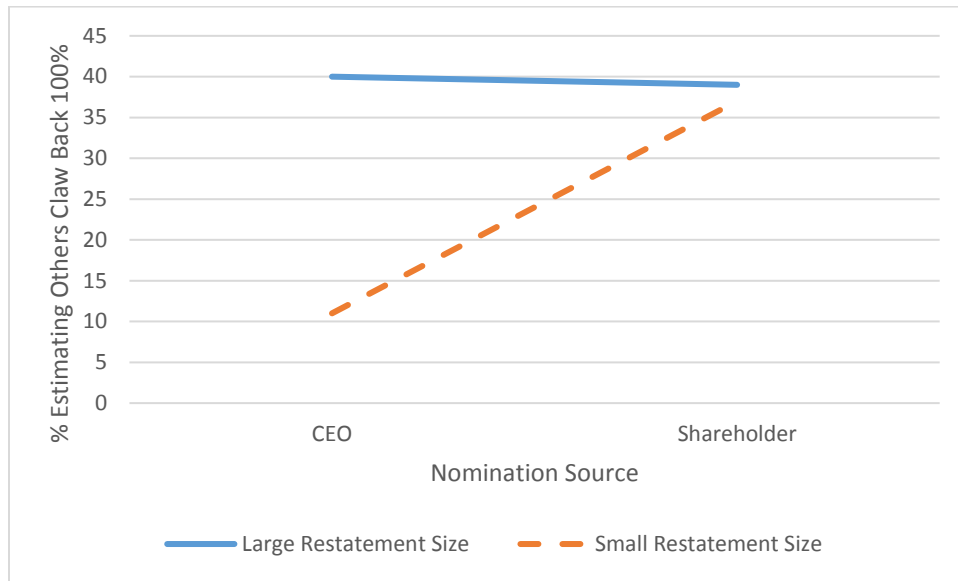


Figure 5 Observed Effects of Nomination Source and Restatement Size on the Percentage of Participants Estimating that Other Board Members Claw Back the Full Amount (100%)

5.4.3.1 Hypothesis H3

I again test all my hypotheses in the same order, and therefore begin with Hypothesis 3. Because my dependent variable is now a dichotomous variable, I use loglinear regressions to test my hypotheses. Table 5, Panel A presents the descriptive statistics and Table 5, Panel B presents the results for the loglinear regression. Figure 5 provides a visual representation of the data. I find a marginally significant interaction between Nomination Source and Restatement Size ($F = -1.29$, $p = .10$, one-tailed) in the predicted direction. Specifically, the difference in participants' estimates for board members who were nominated by the CEO versus those nominated by shareholders is larger when the Restatement Size is Small (SH mean 37% - CEO mean 11% = 26% difference)

than when the Restatement Size is Large (SH mean 39% - CEO mean 40% = -1% difference). This result differs from my results using either Own Clawback Percentage or Others' Clawback Percentage as the dependent variable, and is consistent with the pattern predicted in H3.

5.4.3.2 Hypothesis H1

I next test H1 using the Others' Clawback – Dichotomous dependent variable. Table 5, Panel B shows a marginally significant main effect of Nomination Source ($z = 1.5$, $p = .068$, one-tailed), which indicates that participants' estimates that others will claw back the full amount of compensation are lower when board members are nominated by the CEO (mean = 26%) than when they are nominated by the shareholders (mean = 38%). This result is consistent with the reciprocity predicted in H1.

5.4.3.3 Hypothesis H2

Finally, I test H2 using Others' Clawback - Dichotomous as the dependent variable. Table 5, Panel B, shows that consistent with H2 (and with my previous tests of H2), Restatement Size has a significant effect on participants' estimates of other board members' willingness to claw back the full amount ($z = 1.62$, $p = .05$, one-tailed). Specifically, participants believed that other board members would be more willing to claw back the full amount when the CEO missed the target by a larger amount (mean = 39%) than when the CEO missed the target by a smaller amount (mean = 24%).

**Table 5 Alternative Tests of Hypotheses about Nomination Source and Restatement Size
Using Others' Clawback - Dichotomous as the Dependent Variable**

Panel A: Means (Standard Deviations) of Others' Clawback - Dichotomous^a

	<u>Large Restatement^a</u>	<u>Small Restatement^a</u>	<u>Combined</u>
CEO Nomination ^a	0.40 (0.50)	0.11 (0.32)	0.26 (0.45)
Shareholder Nomination ^a	0.39 (0.50)	0.37 (0.50)	0.38 (0.49)
Combined ^b	0.39 (0.50)	0.24 (0.43)	

^a Variable definitions are provided in Appendix A.

^b The Head-Hunting Firm Nomination condition is not used because the analysis is meant to test reciprocity. Participants in the Head-Hunting Firm Nomination condition cannot reciprocate toward the nominating party.

Panel B: Log Linear Analysis with Dependent Variable Others' Clawback - Dichotomous^a

	IRR	z	p-value ^b
Restatement Size ^a	3.600	1.62	0.05
Nomination Source ^a	3.316	1.50	0.07
Interaction of Restatement Size And Nomination Source	0.293	-1.29	0.10

^a Variable definitions are provided in Appendix A.

^b Reported p-values are one-tailed due to predicted relationships.

The results of all three sets of tests of hypotheses using Own Clawback Percentage, Others' Clawback Percentage, and Others' Clawback - Dichotomous are summarized as follows. When using Own Clawback Percentage as the dependent variable, I do not find evidence of reciprocity or an interaction between nomination source and the size of the restatement (which is meant to capture cognitive dissonance) in board member responses. However, additional tests suggest social desirability bias affects participants' own responses, so board members' own responses might not be the most revealing measure of their true beliefs. Using both of my measures regarding other board members' clawback decisions (i.e., Others' Clawback Percentage and Others' Clawback – Dichotomous), I do find evidence of reciprocity. However, the influence of reciprocity does not systematically vary with the size of the restatement, as I predicted, and only did so when the dependent variable was Others' Clawback - Dichotomous. Therefore, I conclude that it is likely that both reciprocity and restatement size can influence board members' clawback decisions, but that the mechanism is not necessarily through cognitive dissonance. Because my experimental instrument does not provide data to test the underlying mechanism for the results obtained for estimates of others' clawback decisions (either as a percentage or as a dichotomous measure), I am unable to understand the reasons for board members' decisions regarding others' estimates as I did for board members' own decisions. Future research could examine whether restatement size changes the nature of a board member's feelings of reciprocity.

5.5 Supplemental Analysis

In the previous tests of hypotheses, I use only the CEO and Shareholder Nomination conditions. When the CEO and Shareholder nominations lead to different clawback decisions,

consistent with reciprocity, it is not clear whether one or both nominating sources influenced participants' clawback decisions from what they would otherwise have been. In this section, I use the Head-Hunting Firm Nomination condition, in which participants could not reciprocate, as a baseline condition to better understand the influence of the two nomination source conditions. I do not need to use the baseline condition when the dependent variable is Own Clawback Percentage because I did not find any difference between the two nominating sources (i.e., no effect of reciprocity). However, when the dependent variable is Others' Clawback Percentage the baseline condition is useful to understand what board members' clawback decisions would have been if they had not been influenced by either nominating source, and to determine whether board members are naturally more aligned with shareholders or the CEO absent any feeling of reciprocity related to their nomination to the board.

In this analysis, I compare Others' Clawback Percentage in both the Shareholder Nomination condition and the CEO Nomination condition to Others' Clawback Percentage in the baseline Head-Hunting Firm Nomination condition. Table 6, Panel A provides the descriptive statistics for all three nomination conditions used in this analysis. The average response for participants in the Head-Hunting Firm Nomination condition is 68% of the \$4.5 million in compensation subject to the clawback decision. This is between the average responses of 64% for participants in the CEO Nomination condition and 72% for participants in the Shareholder Nomination condition.

Table 6, Panel B shows the results of the t-tests and Mann-Whitney U tests used in determining the relationship of the Head-Hunting Firm Nomination condition to the other two conditions. I find that participant responses in the Head-Hunting Firm Nomination condition are not statistically different from the responses of board member participants in either the CEO or the

Shareholder Nomination conditions. Thus, when participants are not obligated toward the nominating party, they do not seem to be more aligned with one party or the other. It appears that both the CEO and Shareholder nominating sources influenced board members' clawback decisions in my previous analysis, causing them to differ from each other. Consistent with this conclusion, I conduct a Jonckheere-Terpstra test and find that the Head-Hunting Firm Nomination condition responses fall between the other two conditions; I find a marginally significant trend ($p = .0955$) that CEO Nomination < Head-Hunting Firm Nomination < Shareholder Nomination. These results are reported in Table 6, Panel C.

**Table 6 Comparisons of Head-Hunting Firm Condition to the CEO and Shareholder
Nomination Conditions**

**Panel A: Means (Standard Deviations) of Estimates of Others' Clawback Percentage in the CEO,
Head-Hunting Firm, and Shareholder Nomination Conditions^a**

	<u>CEO</u>	<u>Head Hunter</u>	<u>Shareholder</u>	<u>Total</u>
Estimates of Others' Clawback Percentage	.64 (.29)	.68 (.30)	.72 (.3)	.68 (.29)

^aVariable definitions are provided in Appendix A.

**Panel B: T-test Comparing Others' Clawback Percentage in Head-Hunting Firm Condition to CEO
and Shareholder Conditions^b**

Comparison of Others' Clawback Percentage	<u>t</u>	<u>p-value</u>
CEO vs Head Hunter Nomination Source	0.54	0.59
Head Hunter vs Shareholder Nomination Source	0.55	0.58

^bVariable definitions are provided in Appendix A.

**Panel C: Jonkheere-Terpstra Test of Hypothesized Trend CEO < Head Hunter <
Shareholder^c**

Trend for Others' Clawback Percentage	<u>p-value</u>
CEO < Head Hunter < Shareholder	0.10

^cVariable definitions are provided in Appendix A.

6.0 Survey

6.1 Chapter Overview

Chapter 6 describes the results of my survey. Section 6.2 reports the demographics and participants' experience in detail. Section 6.3 provides an analysis of how board members view clawbacks in general. Section 6.4 addresses board members' perceptions of no-fault clawback policies.

6.2 Demographic Data

After participants responded to questions related to the case materials, they responded to questions about clawbacks generally and answered demographic questions. (See Appendix E for the wording used for the questions in the survey part of the PEQ).

Board members answered questions about their background and experience. I report the results of these questions in Table 7, Panel A. On average, board members were 54 years old and had 31 years of total business experience. Approximately 47% of participants had an average of 13 years of experience as executives in public companies, and 34% of participants served for an average of 12 years as board members of public companies. Of the 112 board members who participated in this study, 21 reported that their only experience as board members was with not-for-profit companies. Thus, the participant pool used for this study varied and included many board members with significant experience as board members for both public and private companies.

In addition to questions about board member demographics, I also asked participants about their experience with clawbacks in practice. Specifically, I asked whether participants have had experience in companies with clawback policies and whether they were involved with any clawback decisions. Participants who were involved in clawback decisions were asked to report how much compensation was at risk to be clawed back and what the outcome of the clawback decision was. Participant responses are summarized in Table 7, Panel B. Fifty-three participants (49%) responded that they had experience in companies with clawback policies. Twenty board members reported that they were involved in a total of 33 clawback decisions. I received complete responses for 26 of the 33 clawback decisions. The amount of compensation *subject to* the clawback decision ranged from \$5,000 to \$43.5 million with a mean of \$6,357,333. The average amount *actually* clawed back was \$2,103,833. When calculated as a percentage, the average clawback is 31% of the amount of compensation subject to the clawback decision. Twelve of the twenty-six clawback decisions resulted in no income being clawed back.

Because of the relative infrequency of clawbacks that receive publicity, the finding that more than half of the clawback decisions reported in this study resulted in some amount of compensation being recovered is surprising. However, when taken in conjunction with the results from the first part of this study, the actual percentage clawed back in practice is much lower than the percentages that board members say they would claw back in my study and lower even than the amount they believe other board members would claw back. I statistically test the data to see if the higher clawback amounts in this study can be attributed to board members who do not have experience with clawbacks in practice. I find no significant difference in board members' estimate of other board members' clawback amount when comparing responses from board members with (mean = 3.31) and without (mean = 2.98) clawback experience ($t = .39$ two-tailed). Thus,

experience with clawbacks in practice does not seem to influence board members' assessment of how other board members will respond in my study.

Table 7 Board Member Characteristics and Experience

Panel A: Means (Standard Deviations) of Board Member Characteristics

Demographics (n=109)	Mean	S.D.
Age	54.01	11.70
% Male	0.88	0.33
% United States Citizenship	1.00	0.00
English as the Native Language	0.98	0.13
Work Experience	Mean	S.D.
Total Business Experience (in years)	31.15	11.70
Total Executive Experience (in years)	15.93	1.29
Executive Experience in a Public Company (n=51)		
% of Participants	0.47	0.50
Years of Experience	12.79	8.91
Total Board Member Experience (in years)	15.97	13.86
Board Member Experience in a Public Company (n=41)		
% of Participants	0.34	0.48
Years of Experience	11.97	9.03
Board Member Experience Solely in Not-for-Profit Company (n=20)		
% of Participants	0.22	0.41
% of Board Members Who Serve on the Following Committees:		
Nominating and Governance	0.55	0.50
Audit	0.51	0.50
Compensation	0.54	0.50
Finance	0.14	0.35
Executive	0.06	0.23
Risk	0.06	0.23
Strategy	0.04	0.19
Health, Safety, and Environmental	0.05	0.21
Other	0.20	0.40

TABLE 7 (continued)**Panel B: Means (Standard Deviations) of Board Member Experience with Clawbacks**

Clawback Experience	Mean	S.D.
% of Participants with Experience in a Company That Has a Clawback Policy	0.49	0.50
% of Participants Involved in a Clawback Decision	0.18	0.39
<hr/>		
Clawback Decisions and Outcomes (n = 33)	Mean	S.D.
Amount of Compensation Subject to Clawback Decision	6,357,333	12,281,715
Actual Amount Clawed Back	2,103,833	5,602,087
Actual Amount Clawed Back as % of Compensation Subject to Clawback ^a		
For All Clawback Decisions	0.31	0.34
For All Clawback Decisions > 0	0.58	0.23
% of Decisions That Resulted in No Clawback	0.36	0.49

^a One board member responded to Actual Amounts Clawed Back with percentages as opposed to dollar amounts. These percentages are not included in the means for the Actual Amount Clawed Back because the board member did not provide responses to the Amount of Compensation Subject to Clawback Decision. These percentages are included, however, in Actual Amount Clawed Back as % of Compensation Subject to Clawback.

6.3 Perceptions of Clawbacks Generally

As described in the Procedures section, participants also responded to questions designed to discover how board members think of clawbacks generally. Participants indicated the extent to which they agree with four statements: 1) that the decision to claw back compensation from the CEO would harm their relationship with the CEO, that it would 2) have an overall positive

financial effect on shareholders, 3) that clawbacks are an effective tool at preventing future restatements or misconduct, and 4) that clawbacks serve to instill confidence in strong corporate governance among shareholders. The responses are on a 7-point scale, ranging from strongly disagree (-3) to strongly agree (+3), with 0 being neither agree nor disagree.

I conduct t-tests on the four variables to determine whether the participants' responses are different from the neutral response. Table 8, Panel A provides the descriptive statistics for all four variables. The responses to all four measures are greater than the neutral response of 0 (see Table 8, Panel B; $p < .001$ for all). This indicates that board members believe that the decision to claw back, in general, harms their relationship with the CEO, has a positive financial impact on shareholders, helps to prevent future restatements, and increases shareholder confidence in strong corporate governance in the company. However, they do not agree with these statements to the same extent. I conduct sign tests which provide some information on whether board members have stronger beliefs regarding one statement over another. Table 8, Panel C provides the results of the sign tests used to determine the relationships among these variables. These results exhibit the following relationships:

$$\begin{matrix} \textit{Harm Relationship} \\ \textit{with CEO} \end{matrix} < \begin{matrix} \textit{Positive Financial Impact on Shareholders} \\ \textit{Prevent Future Restatements} \end{matrix} < \begin{matrix} \textit{Increase Shareholder} \\ \textit{Confidence} \end{matrix}$$

From this analysis, we learn that board members believe clawbacks serve several purposes, many of which have positive outcomes. According to participant responses, board members agree most with the idea that clawbacks increase shareholder confidence in the corporate governance at the firm. Shareholder confidence, though arguably important for maintaining share price and the

economic stability of the stock market, could potentially be thought of as window dressing, i.e. as the means to make corporate governance appear satisfactory without actually having any real economic benefit to shareholders. However, board members' belief that clawbacks help prevent future restatements and are financially beneficial to shareholders alleviates some of the concerns that clawbacks don't truly serve the owners of the company. In addition, though board members agree least with the idea that the decision to clawback harms their relationship with the CEO, they still believe that it does negatively affect this relationship. This belief could lead to fewer clawbacks or clawbacks of smaller amounts. Future research might examine whether this belief decreases board members' willingness to claw back from the CEO and how to allow board members to make decisions favorable to shareholders without simultaneously hurting their relationship with the CEO, which is important to the functioning of the board (Clune et al., 2014).

Table 8 Tests of Board Members' General Perceptions of Clawbacks

Panel A: Means (Standard Deviations) of Board Member Perceptions That a Clawback Would Harm Their Relationship with the CEO, Have a Positive Impact on Shareholders, Help to Prevent Future Restatements, and Increase Shareholder Confidence in the Corporate Governance of the Firm^a

General Perceptions Variables	Mean	S.D.
Harm Relationship with CEO ^b	0.42	1.52
Positive Financial Impact on Shareholders ^b	1.28	1.51
Prevent Future Restatements ^b	1.56	1.24
Increase Shareholder Confidence ^b	1.81	1.25

^aParticipant responses are on a 7-point scale, ranging from strongly disagree (-3) to strongly agree (+3), with 0 being neither agree nor disagree.

^b Variable definitions are provided in Appendix A.

Panel B: T-test Determining Whether Agreement with Statements is Different from the Neutral Response^a

General Perceptions Variables > 0	t	p-value
Harm Relationship with CEO ^b	2.79	<0.001
Positive Financial Impact on Shareholders ^b	8.58	<0.001
Prevent Future Restatements ^b	12.70	<0.001
Increase Shareholder Confidence ^b	14.67	<0.001

^aParticipant responses are on a 7-point scale, ranging from strongly disagree (-3) to strongly agree (+3), with 0 being neither agree nor disagree.

^b Variable definitions are provided in Appendix A.

TABLE 8 (Continued)**Panel C: Wilcoxon Sign Rank Test Comparing Relationships Among General Perceptions Variables^a**

Sign Test	z	p-value
Harm Relationship with CEO ^b > Positive Financial Impact on Shareholders	-4.20	<0.001
Harm Relationship with CEO > Prevent Future Restatements	-4.52	<0.001
Harm Relationship with CEO > Increase Shareholder Confidence	-5.45	<0.001
Positive Financial Impact on Shareholders > Prevent Future Restatements	-1.04	0.30
Positive Financial Impact on Shareholders > Increase Shareholder Confidence	-2.43	0.02
Prevent Future Restatements > Increase Shareholder Confidence	-2.20	0.03

^aParticipant responses are on a 7-point scale, ranging from strongly disagree (-3) to strongly agree (+3), with 0 being neither agree nor disagree.

Variable definitions are provided in Appendix A.

6.4 Fairness of a No-Fault Clawback Policy

Participants are asked to rate the extent to which they agree that the no-fault clawback policy used in my study is fair to the CEO (mean = 2.09) and the extent to which it is fair to shareholders (mean = 2.04). The descriptive statistics for clawback policy fairness are provided in Table 9, Panel A. I compare participants' responses to see whether participants believe this type of clawback policy is fairer to one of the two parties. Table 9, Panel B presents the results of the sign test used for this analysis. I find no difference in perceptions of fairness of the clawback policy toward the CEO versus the shareholders ($p = .53$). This finding that board members believe a no-

fault clawback policy is equally fair to the CEO and the shareholders provides input to regulators' considering whether to require companies to adopt no-fault clawback policies.

Table 9 Fairness of a No-Fault Clawback Policy

Panel A: Means (Standard Deviations) of Clawback Policy Fairness

	Mean	S.D.
Clawback Policy Is Fair to CEO ^a	2.09	1.14
Clawback Policy Is Fair to Shareholders ^a	2.04	1.32

^a Variable definitions are provided in Appendix A.

Panel B: Sign Test Comparing Fairness of the Clawback Policy to the CEO and to Shareholders

Wilcoxon Rank Sign Test	z	p-value
Clawback Policy Is Fair to CEO ^a vs Fair to Shareholders ^a	-0.63	0.53

^a Variable definitions are provided in Appendix A.

7.0 Discussion, Contributions, and Limitations

7.1 Discussion and Contributions

Reciprocity and cognitive dissonance are psychological theories that have been tested and confirmed in a series of prior studies. I integrate these theories in my study to see how these related cognitive effects jointly affect board member decisions. I test for differences in board members' decision to claw back compensation from the CEO based on whether they were nominated by the CEO or shareholders (testing for reciprocity) and whether the restatement that led to the clawback decision was large or small (testing for cognitive dissonance). I find no evidence that either reciprocity or cognitive dissonance plays a role in board members' *own decisions* to claw back CEO compensation. However, participants are almost unanimous in their belief that clawing back the full amount of compensation is the ethical decision, and also respond that they would always claw back the full amount regardless of nomination source or restatement size. This result indicates that board members' clawback responses are likely influenced by social desirability bias, which is participants' tendency to over-report their own ethical behavior and underreport their own unethical behavior.

To overcome this bias, I also analyze participants' beliefs regarding other board members' responses. I test my hypotheses again using both a continuous and a dichotomous variable based on board members' estimates of others' clawback decisions. The continuous variable is the estimated average dollar amount other board members clawback. The dichotomous variable is coded as 1 if board members believe that, on average, other board members will claw back the full amount of CEO compensation subject to clawback and 0 if board members believe the others'

average clawback response is less than the full amount. Given that most believe it is ethical to clawback the full amount, the dichotomous variable, in effect, also tests whether board members believe the average board member's response is the ethical response.

I find evidence consistent with board members believing reciprocity plays a role in how other board members make their clawback decisions. In other words, board members believe their peers will claw back more CEO compensation when nominated by the shareholders than when nominated by the CEO. However, I am unable to determine whether this result is due to feelings of obligation toward the nominating party because I only collected participants' *own* feelings of obligation and not their estimate of *other* board members' feelings of obligation toward the nominating party.

I find mixed evidence for the belief that cognitive dissonance affects other board members' clawback decisions. Specifically, when testing the estimated amount that others, on average, would claw back (continuous variable), I find no significant difference between responses in the large and small restatement conditions. However, when the dichotomous variable is used as the dependent variable in my analyses, I find that significantly more board members believe others would, on average, claw back the full amount when the restatement is large than when it is small. Because my evidence is mixed, I do not reach any clear conclusions regarding the effect of cognitive dissonance on board members' clawback decisions.

My study has implications for regulators who will decide whether to adopt new policies regarding shareholder nomination of board members and mandated clawback policies. In particular, my experiment provides insights on how board members respond to shareholder nominations and answers the call by the U.S. Circuit Court of Appeals when they overturned Section 14a-11 of the SEC legislation for evidence regarding the potential costs and benefits of

shareholder nominations. Specifically, my finding that board members may reciprocate toward the nominating party suggests that the SEC might want to allow, or even encourage, shareholder nominations. By allowing shareholders to nominate potential candidates for the board of directors on the proxy statement, the SEC could help to increase board member reciprocity to shareholders and thereby increase the likelihood that they will make decisions more in line with shareholders' interests.

In addition to providing evidence of a potential benefit of shareholder nominations, I also add to the clawback literature by asking board members' opinions on several aspects relating to clawbacks. Due to the paucity of clawbacks in practice, it is important to understand how board members view and make clawback decisions, particularly as the SEC seeks to create new legislation relating to the clawback process for public companies. I find that board members generally believe no-fault clawback policies are fair to both the CEO and shareholders. They also agree that the decision to claw back compensation from the CEO due to a restatement benefits the company and shareholders because they believe that it increases shareholder confidence in the company's corporate governance, helps to prevent future restatements, and has a positive financial impact on shareholders. However, board members also believe that the decision to claw back will have a negative impact on their relationship with the CEO, an important dynamic for board functioning (Clune et al., 2014). Thus, clawing back from the CEO could have positive, immediate consequences for shareholders, but also have potential future negative consequences by harming the relationship with the CEO. Proposal 10d-1 explores removing board member discretion over the clawback decision. One potential benefit of this proposal is that it would eliminate the resulting harm to the relationship between the CEO and board members since board members would not have a role in the decision to claw back from the CEO.

Both the findings from the survey data and the results from my experiment provide evidence that could be useful in future deliberations regarding clawbacks of compensation and shareholder nominations of board members. The combined results provide evidence for how the proposals for both shareholder access to the proxy statement for board member nominations and whether to remove board member discretion over the clawback decision might be connected in practice. For example, when shareholders are given access to the proxy statement for board member nomination, board member discretion over the clawback decision is more likely to be aligned with shareholder interests. Thus, the increased board member independence resulting from shareholder nominations would also have a positive impact on clawback decisions. As such, it might not be necessary to remove board member discretion over clawback decisions, because the SEC might be able to achieve the desired outcome by improving the board member nomination process.

7.2 Limitations and Future Research

A few board members who participated in this study provided the feedback that the setting was not applicable to all board members due to the size of net income and/or the restatement. Although my setting was patterned after a large, public company and the board member participants in my study came from firms with varying characteristics and sizes, I used them for two reasons. First, board members typically sit on boards for more than one company and many board members who sit on boards for private or not-for-profit companies also sit on public company boards. If I had limited my participant criteria, I could have inadvertently lost potential participants who would have fit the profile for my setting. Second, participants who sit on boards

for private or not-for-profit companies are likely good proxies for board members from public companies. Analogous to studies that use MBA students as participants because they are future managers, I use board members of non-public entities as proxies for public company board members because they are likely to one day be public company board members (Remus, 1986). Consistent with this argument, a recent Forbes article suggests that board members who have experience on not-for-profit boards often leverage this experience to help gain a seat on a public company board (Collamer, 2017).

Because I use real board members as participants in my study, my instrument needed to be kept short enough that board members, whose discretionary time is limited, could feasibly participate. Thus, I did not ask board members to justify their decisions. Nor did I ask for their beliefs about other board members' potential mediation variables, which would have provided insight into how board members believe other board members justify their decision to claw back less when the CEO nominated them. Future research could address these limitations of my study by directly asking board members to justify their own decisions and how other board members might justify their decisions.

My study examines a benefit of shareholder nominations, but more research could address some of the costs or other benefits of this hotly debated policy. If shareholder nomination remains a topic of consideration, additional research could examine ways to mitigate the effects of reciprocity toward the CEO on board members' decisions. One potential way to mitigate these effects could be by decreasing the CEO's ability to help board members, thereby reducing reciprocal behavior toward the CEO. This could be achieved by either removing the CEO from the nominating process completely or having anonymous nominations such that members of the nominating committee can only judge a candidate on their merits. The ability to maintain

anonymity might be problematic, however, since board members and the CEO generally have close relationships.

Another way to mitigate the negative effects of reciprocal behavior would be to increase board members' need to reciprocate toward shareholders. This could be more difficult to accomplish because there are relatively few ways that shareholders interact with the board. Currently, the shareholder vote for board nominees does not always influence the board's decision. By making the shareholder vote have a greater impact on board outcomes, board members who are voted onto the board, or voted on to remain on the board, may feel a greater sense of obligation toward shareholders.

Future research could also examine whether board members who learn of their propensity to reciprocate could try to compensate for this when making decisions. In addition, future research can address whether tighter clawback requirements might lead to higher overall salaries for top management to compensate for the increased risk of having their compensation clawed back. These concerns should be addressed and understood before establishing additional rules regarding clawbacks of compensation.

Appendix A

VARIABLE DEFINITIONS

Variable	Definition
Own Clawback Percentage	Amount of incentive compensation clawed back divided by the total amount of incentive compensation that could have been clawed back
Others' Clawback Percentage	Participants' estimate of the average clawback response of other board members in the same manipulation divided by the total amount of incentive compensation that could have been clawed back.
Others' Clawback (Dichotomous)	Indicator variable that equals 1 if participants estimated the average of other board members' clawback responses was the full clawback amount of \$4.5 million, or as 0 if participants estimated that other board members would claw back less than the full \$4.5 million.
Ethical Clawback Percentage	Participants' belief regarding the right amount of incentive compensation to claw back from the CEO, disregarding practical considerations, divided by the total amount of incentive compensation that could have been clawed back.
Restatement Size	Indicator variable that equals 1 if the restatement size is large (\$260 M decrease), 0 otherwise (\$63 M decrease)
Nomination Source	Indicator variable that equals 1 if the nominating party is the CEO, 2 if the nominating party is a head-hunting firm, and 3 if the nominating party is a group of shareholders. When comparing only the CEO and shareholder nomination groups, this indicator variable measures 1 if the group of shareholders nominate, 0 if the CEO nominates.
Clawback Policy Is Fair to CEO	Extent to which participants agree that the clawback policy is fair to the CEO. Values range from -3 to 3, with -3 being

Strongly Disagree, 0 being Neither Agree nor Disagree, and 3 being Strongly Agree.

(Continued)

APPENDIX A –Continued

Clawback Policy Is Fair to Shareholders	Extent to which participants agree that the clawback policy is fair to shareholders. Values range from -3 to 3, with -3 being Strongly Disagree, 0 being Neither Agree nor Disagree, and 3 being Strongly Agree.
Obligation Toward CEO	Extent to which participants feel obligated to the CEO. Values range from -3 to 3, with -3 being Not Obligated, and 3 being Very Obligated.
Obligation Toward Shareholders	Extent to which participants feel obligated to the shareholders. Values range from -3 to 3, with -3 being Not Obligated, and 3 being Very Obligated.
CEO Responsibility	Extent to which participants agree that the CEO is responsible for the restatement. Values range from -3 to 3, with -3 being Strongly Disagree, 0 being Neither Agree nor Disagree, and 3 being Strongly Agree.
Harm Relationship with CEO	Extent to which participants believe that a decision to clawback from the CEO will harm their relationship with the CEO. Values range from -3 to 3, with -3 being Strongly Disagree, 0 being Neither Agree nor Disagree, and 3 being Strongly Agree.
Positive Financial Impact on Shareholders	Extent to which participants believe that a decision to claw back from the CEO will have a positive financial effect on shareholders. Values range from -3 to 3, with -3 being Strongly Disagree, 0 being Neither Agree nor Disagree, and 3 being Strongly Agree.
Prevent Future Restatements	Extent to which participants believe that a decision to claw back from the CEO will help to prevent future restatements. Values range from -3 to 3, with -3 being Strongly Disagree, 0 being Neither Agree nor Disagree, and 3 being Strongly Agree.

Increase Shareholder
Confidence

Extent to which participants believe that a decision to claw back from the CEO will increase shareholder confidence in corporate governance at the company. Values range from -3 to 3, with -3 being Strongly Disagree, 0 being Neither Agree nor Disagree, and 3 being Strongly Agree.

Appendix B

RECRUITMENT EMAIL MESSAGE

Hello, my name is Melinda Ford, and I am an accounting PhD student at the University of Pittsburgh. For my dissertation, I am asking board members of public and private companies to participate in my research study, which takes about 10 - 15 minutes to complete. I truly appreciate your participation and, as a token of my gratitude, I will send a \$25 Amazon gift card to either you or to a family member or friend of your choice, or I will donate \$25 to the charity of your choice.

To participate, please either click on the link below or type the url into your internet browser:

[Link provided here](#)

Because my study requires 90 board member participants, I would also greatly appreciate and encourage sharing these introductory paragraphs and link with other board members you know who might also be willing to participate in this study. I understand that beliefs regarding lack of privacy and anonymity are potential deterrents to participation and want to emphasize that no personal or identifying information will be collected.

Thank you so much for your time and help,

Melinda Ford

Appendix C

JOHNSON & JOHNSON COMPENSATION RECOUPMENT POLICY

In the event of a material restatement of the Company's financial results, the Board will review the facts and circumstance that led to the requirement for the restatement and will take such actions as it deems necessary or appropriate. The Board will consider whether any executive officer received compensation based on the original financial statements because it appeared he or she achieved financial performance targets which in fact were not achieved based on the restatement. The Board will also consider the accountability of any executive officer whose acts or omissions were responsible in whole or in part for the events that led to the restatement and whether such acts or omissions constituted misconduct.

The actions the Board may elect to take against a particular executive officer, depending on all the facts and circumstances as determined during their review, could include (i) the recoupment of all or part of any bonus or other compensation paid to the executive officer that was based upon the achievement of financial results that were subsequently restated, (ii) disciplinary actions, up to and including termination, and/or (iii) the pursuit of other available remedies.

For purposes of this Policy, the term "executive officers" means all members of the Executive Committee, the Corporate Controller, and such other executives of Johnson & Johnson as may be determined by the Board.

Appendix D

EXPERIMENTAL INSTRUMENT

D.1 CEO Nomination with Large Earnings Restatement

Overview

Assume that Molly Coddle, Inc. is a large publicly-traded retail company specializing in children's clothing. This year, a member of the company's board of directors retired.

Although you have no personal connection with him, Tom Butler, the CEO of Molly Coddle, Inc., nominated you to fill the vacant position after reviewing information about you and other potential candidates. As is generally the case with Molly Coddle, Inc., CEO Tom Butler's nomination resulted in your appointment to the board.

Company policy requires that board members hold company stock. At this point in time, you hold the minimum stock requirement. All shareholders, including board members, receive their share of dividends distributed by Molly Coddle, Inc.

CEO Tom Butler's Compensation

Last year, CEO Tom Butler's compensation totaled \$9.8 million, which included both a base salary and incentive compensation as shown below:

CEO Compensation	Amount
Base Salary	\$2.8 million
Incentive Compensation	\$7.0 million
Total Compensation	\$9.8 million

The company's Net Income last year was \$960 million. Of the \$7.0 million in CEO incentive compensation Tom received for the year (see table above), \$4.5 million was received for achieving last year's Net Income target of \$945 million. That is, \$4.5 million of the \$7 million was received because last year's reported Net Income of \$960 million exceeded last year's target Net Income of \$945 million.

Clawback Policy

The Company has a clawback policy for the CEO and other chief executives as follows:

“Under our compensation clawback policy, board members are authorized to use discretion to decide whether to recover all or part of any incentive-based compensation paid to the CEO or other chief executives in the event there is a restatement of the company's financial statements, regardless of whether the restatement resulted from error or fraud. Board members will consider whether the CEO and other chief executives received compensation because, based on the original financial statements, they appeared to achieve a financial performance target, but based on the restated financial statements, the target actually was not achieved.”

The clawback policy also explains that any incentive compensation recovered from the CEO or other chief executives will be distributed as a dividend to all shareholders, including board

members, all of whom are required to hold company shares. According to the clawback policy, the CEO and other chief executives cannot financially benefit in any way from a clawback of their own compensation.

Restatement of Prior Year Net Income

Early this year, while conducting the audit of last year's financial statements, the auditors found that inventory had been overstated. Tom argues that the overstated inventory was not intentional. While the auditors suspect that the overstatement was intentional, they have found no evidence of Tom's involvement. Correcting the inventory misstatement resulted in a restatement of last year's Net Income from \$960 million down to \$700 million (a decrease of \$260 million).

As a result of this downward restatement, last year's Net Income now falls \$245 million below the Net Income target of \$945 million that was used to determine part of Tom's incentive compensation. Specifically, \$4.5 million of Tom's \$7.0 million of incentive compensation was awarded based on reaching last year's \$945 million Net Income target. As indicated in the clawback policy provided above, board members are responsible for deciding whether to recover any, some, or all of this \$4.5 million from Tom, the CEO. For purposes of this study, assume that only you will make this decision.

You will decide how much of last year's incentive compensation to recover from the CEO, Tom Butler, and your decision will be implemented. The amount of compensation recovered from Tom will be deducted from his \$9.8 million compensation and then will be distributed to all shareholders, including board members, all of whom hold at least the required minimum of company shares.

D.2 Shareholder Nomination Wording

Although you have no personal connection with any of them, a group of large investors who jointly own a significant portion of the shares of Molly Coddle, Inc. nominated you to fill the vacant position after reviewing information about you and other potential candidates. As is generally the case with Molly Coddle, Inc., the investor group's nomination resulted in your appointment to the board.

D.3 Head-Hunting Firm Nomination Wording

Although you have no personal connection with the head hunting firm that Molly Coddle's board uses to submit names for new board members, this firm has nominated you to fill the vacant position after reviewing information about you and other potential candidates. As is generally the case with Molly Coddle, Inc., the head hunting firm's nomination resulted in your appointment to the board.

D.4 Small Earnings Restatement Wording

Correcting the inventory misstatement resulted in a restatement of last year's Net Income from \$960 million down to \$897 million (a decrease of \$63 million).

As a result of this downward restatement, last year's Net Income now falls \$48 million below the Net Income target of \$945 million that was used to determine part of Tom's incentive compensation.

Appendix E

DEPENDENT VARIABLE, MANIPULATION CHECK, PEQ, AND DEMOGRAPHIC QUESTIONS

E.1 Dependent Variable

What amount of clawback would you recommend?

E.2 Manipulation Check

In the scenario you just read, who nominated you to the board of directors for Molly Coddle, Inc.?

- the CEO
- a head hunting firm
- a group of investors

Which of the following reflects what was explained in the case materials?

- It was unclear whether the overstatement was intentional.
- The CEO intentionally inflated net income.
- The restatement was due to an unintentional error.

E.3 PEQ Related to Scenario Specifically

Other board members were also asked what amount they would recommend clawing back from the CEO. What is your estimate of their answer, on average? If you estimate within .5 million of the average answer, you will receive a bonus of \$5.00 in addition to the \$25.00 payment for participating in this study.

Disregarding other practical considerations, what do you believe as an individual is the right amount to claw back from the CEO?

Please rate the extent to which you agree with the following statements:

	Strongly Disagree	Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat Agree	Agree	Strongly Agree
The CEO is responsible for the inventory overstatement.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clawback policy is fair to the CEO.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clawback policy is fair to shareholders.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If the CEO had not already been given the \$4.5 million incentive bonus before the restatement, what amount of bonus compensation would you recommend giving the CEO after the restatement took place?

Please indicate on the scale below the amount of personal obligation you feel toward the CEO and the shareholders.

_____ Obligation to CEO:

_____ Obligation to shareholders:

Please briefly explain why you felt or did not feel obligated to the CEO.

Did you apply a numerical rule (i.e. a standard compensation package formula) to determine the clawback amount?

If yes...

Please briefly explain the formula you used.

You have now completed all questions related to the scenario used in this study. The following questions do not relate specifically to that scenario, but rather are related to your background and experience in general.

Please rate the extent to which you agree that a decision to claw back incentive compensation from a CEO would:

	Strongly Disagree	Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat Agree	Agree	Strongly Agree
Harm your relationship with the CEO:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have an overall positive financial effect on shareholders:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please rate the extent to which you agree with the following statements:

	Strongly Disagree	Disagree	Somewhat Disagree	Neither Agree nor Disagree	Somewhat Agree	Agree	Strongly Agree
Clawbacks are an effective tool at preventing future restatements and/or misconduct.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clawbacks serve to instill confidence in strong corporate governance among shareholders.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Have you ever been involved with a company that has a clawback policy?

- Yes
- No

What was your role with that company? Please check all that apply.

- Board Member
- Executive
- Other _____

Have you ever been involved in the clawback decision-making process?

- Yes
- No

What was your role with the company during the clawback decision-making process?

Please check all that apply.

- Board Member
- Executive
- Other _____

How many years of professional business experience do you have:

in total in industry?

as a CEO or other executive of a public company?

as a CEO or other executive of an organization other than a public company?

as a board member of a public company?

as a board member of an organization other than a public company?

If you have served as an executive or board member (or other comparable position) in an organization other than a public company, what type of organization was it? (Check all that apply.)

- Not-for-Profit
- Hospital
- Government
- Other _____

Please list the committees you have served on as a board member. (Check all that apply.)

- Audit Committee
- Compensation Committee
- Nominating/Governance Committee
- Other _____
- None

Demographics:

Age:

- 18 - 25
- 26 - 35
- 36 - 45
- 46 - 55
- 56 - 65
- 66 - 75
- > 75

Gender:

- Male
- Female

Citizenship:

- U.S.
- Other

Native Language

- English
- Other

Thank you for participating in this study. You have now completed all of the questions. Please select how you would like to receive payment for your participation in this study. (Please enter an email address for the gift card or select the name of the charity to receive the donation. Without this information, no payment can be sent.)

- Amazon Gift Card _____
- Children's Hospital
- The Pittsburgh Foundation
- Cancer Research Institute

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