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SESSION REPORT

550

Corporate Governance in the Global Economy: The Changing Role of Directors



SALZBURG GLOBAL FORUM ON CORPORATE GOVERNANCE

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Session 550

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Corporate Governance in the Global Economy: The Changing Role of Directors

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Foreword

Clare Shine

Vice President and Chief Program Officer, Salzburg Global Seminar

Since 1947, Salzburg Global Seminar has challenged current and future leaders to solve issues of global concern. Founded in the aftermath of war at an exceptionally disrupted and unstable moment in history, its programs prioritized critical cross-border transitions – physical, economic, social, cultural – to rebuild societies and trust between peoples. The world of the boardroom seemed far away from the urgent need to renew intellectual dialogue and restore peace and prosperity.

Fast forward nearly 70 years, and the world has seen geopolitical and economic transformation, the emergence of globalization, and the massive expansion of multinational corporations. Salzburg Global’s founders – visionary graduate students from Austria and America who argued at Harvard University for a “Marshall Plan of the Mind” – would certainly have welcomed the inclusion of corporate governance as a major topic in our future strategic convening.

Corporate principals and advisors operate in increasingly complex settings, with diversification of activities beyond their domicile country and dynamic movement between different legal systems. While US corporate governance was long viewed by many as a model for the rest of the world, recent prominent failures have called the US approach into question.

Vigorous academic and public policy debate on corporate governance best practices is under way, with new models being developed globally to advance responsible economic growth and innovation. Key trends include





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a significant movement of investment capital to actively-managed funds, increased regulation, shareholder activism, proxy advisory firm influence, and engagement between companies and shareholders. The external landscape in which companies operate also shapes their changing roles and responsibilities. In a digital age, business activities and their social and environmental costs and benefits are under constant scrutiny from diverse stakeholders representing multiple interests.

The inaugural session of the Salzburg Global Forum on Corporate Governance (October 1-3, 2015) was convened shortly after the United Nations adopted the 2030 Agenda for Sustainable Development, with input from many corporations. The 2030 Agenda calls for a collaborative partnership with all stakeholders to build peace and prosperity, and ensure that economic, social and technological progress occurs in harmony with nature. Yet one week later, the Volkswagen scandal highlighted the potential to wreck trust between business and consumers, with the environment as collateral damage.

We warmly welcome the launch of the annual Salzburg Global Forum on Corporate Governance, which provides a neutral setting for cross-cutting conversation across national boundaries on practical standards, expectations and opportunities as the 21st century advances.

Overview

A decade of corporate turmoil across the globe has called into question longstanding corporate governance practices and stimulated criticism of the status quo. Increasing regulation, a growing focus on social responsibility, and the proliferation of shareholder activism, among many other factors, are changing the role of directors in boardrooms worldwide. As this trend continues it is evident that corporate governance practices have implications beyond the boardroom, affecting not only the operation of critical financial services and the availability of goods and other services in the marketplace, but also macro-level issues like environmental sustainability and fair labor standards.

Until recently many viewed US corporate governance as a model for the rest of the world. But in the wake of several prominent, recent failures in American corporate governance, questions have been raised about the appropriate shape of corporate governance and assumptions underlying the US approach. To be sure, some broad themes remain globally applicable. In order to attract capital in the financial markets, companies must generally act transparently, establish internal controls, be responsive to investor concerns, and avoid insider dealing and other conflict-ridden transactions. It is nonetheless clear that significant geographical and cultural differences in corporate governance ideals persist, making it likely that the debate over best practices will continue well into the foreseeable future.





To address these issues, Salzburg Global Seminar held the session *Corporate Governance in the Global Economy: The Changing Role of Directors*. This session was designed to facilitate critical thinking among diverse global participants about how changing regulatory and economic environments are affecting the role of directors. Accordingly, the session brought together more than 50 corporate governance experts from across Asia, Australia, Europe, North America, and South Africa. The participants included directors and executives of financial institutions and multinational corporations from a variety of industries, current and former regulators and policymakers, experienced lawyers and board advisors, and multidisciplinary academics. During the highly interactive session, conducted entirely under the Chatham House Rule,¹ the participants drew on their diverse backgrounds to debate fundamental corporate governance issues, identify current trends and future developments, and exchange personal experiences.

The session discussion centered on five key topics in corporate governance:

1. The Purpose of the Corporation;
2. The Composition and Role of the Board;
3. The Skills and Leadership Styles of Effective Directors;
4. Internal and External Controls on Corporate Activity; and
5. The Role of Shareholders and Other Stakeholders of the Corporation.

This report highlights significant talking points from the session and offers a number of questions for consideration at future Salzburg Global Seminar sessions on corporate governance.

¹ This session was held under the Chatham House Rule to allow the participants to share their personal thoughts and opinions off the record rather than as representatives of their respective firms and institutions. “When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” For more information, see: www.chathamhouse.org/about/chatham-house-rule

Session Report

Victor T. Nilsson

Session Rapporteur; Associate, Shearman & Sterling

The Purpose of the Corporation

To what extent is or should be the purpose of the corporation to maximize corporate profit and shareholder wealth? Is good citizenship a permissible corporate objective?

The American Law Institute's Principles of Corporate Governance provide that a corporation "should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain." The Principles proceed to recognize, however, that although this objective may not thereby be enhanced, the corporation must conduct its business within legal boundaries, may take into account ethical considerations as appropriate to doing business responsibly, and may devote a reasonable amount of its resources to public welfare and other humanitarian, educational, and philanthropic purposes.² The American Law Institute's statement of the corporation's purpose captures the views of many session participants, though some stressed that profit maximization is in their view too narrow a focus. In the words of one non-US director:

"Once you have complied with the law, you then have to act in an appropriate way that balances the primary interest of the shareholders in the company – who have put their capital at risk in search of return – with the interests of other stakeholders in the company, including not only the board but [also] employees of the company [and] the communities in which you are invested... Then hopefully the vision and ambition statements of the company make clear what values you are in fact prioritizing."

During the session the participants debated a series of hypothetical scenarios in which a public company board is voting on whether to undertake a less profitable but arguably more socially desirable action in the face of more profitable but arguably less socially desirable alternatives.

In one scenario the participants were asked, as board members, where among three alternative locations they would approve building a new factory projected to generate a significant percentage of the company's output upon completion:

"Once you have complied with the law, you then have to act in an appropriate way that balances the primary interest of the shareholders in the company... with the interests of other stakeholders in the company..."

Hopefully the vision and ambition statements of the company make clear what values you are prioritizing. "

² The American Law Institute, "Part II: The Objective And Conduct Of The Corporation," *Principles Of Corporate Governance: Analysis And Recommendations* 55, 55 (1994).

“ There is a common thread to what all the global companies are facing throughout the world. ”

- a) Build the factory in Y State in Country A, which has attracted a number of manufacturers in recent years because the lack of unions and other labor protections leads to cheaper per-unit costs;
- b) Build the factory in a disadvantaged neighborhood in X City in Country A, where labor costs will be 15% greater than in Y State for the foreseeable future, but where the factory is still projected to turn a profit. The company’s chief executive officer grew up in the neighborhood, which is experiencing particularly high unemployment, and would like to give back to the community. Further, the company sells 10% of its product in X City and its regular advertising campaigns give it visibility in the city;
- c) Build the factory in country B in a very low-wage community where manufacturing costs will be 10% less than in Y State and 25% less than in X City.

Of the approximately 50 participants, only a small number indicated that they would vote for option (a) or (b). Notably, the majority of participants indicated that they would vote for option (c) because it enhanced shareholder wealth for the foreseeable future. It was recognized that doing the “right thing” might enhance corporate reputation and the company’s long-term profitability, but that prospect was far in the future and option (c) was therefore seen as more prudent. A thought-provoking question that arose was whether socially responsible investing should be viewed through a local, national or international lens, for example whether outsourcing production to a country with a relatively higher level of unemployment could be justified as socially responsible investing.

In another hypothetical scenario the participants were asked, as board members of a newspaper company considering an unsolicited takeover offer, whether they could take into consideration that the bidder’s way of doing business would threaten the company’s journalistic integrity and commitment to newsgathering. A significant number of participants, from all jurisdictions, thought the board could be justified in rejecting the offer on that basis. However, if the directors were faced with a choice between an all-cash offer of \$40 from a buyer with a reputation for journalistic integrity and \$44 from one who would threaten the journalistic integrity, a substantial majority thought the latter offer had to be accepted.

These results should be interesting to corporate governance experts and laypeople alike because corporations worldwide frequently must make similar decisions – weighing profit maximization against social impact – and, again, those decisions have repercussions beyond the corporations’ bottom lines. As one Asian director aptly remarked, “there is a common thread to what all the global companies are facing throughout the world.”



Broadly speaking, the participants recognized that European and Asian corporations are more stakeholder-oriented than US corporations, either by virtue of social norms or legal regimes. Even the US participants, however, generally did not contend that stakeholder interests should be disregarded in favor of short-term shareholder gain. Several participants supported the idea that prioritizing profit maximization as an objective separate from other socially desirable objectives may actually enable corporations to expend more resources on the latter as profits increase.

There was also general agreement that profit maximization should be thought of as a long-term objective, albeit with less clarity about how to measure or define the long term. Some participants quickly added that although corporations are not under a legal duty to maximize profits in the short term, boards may face the ire of their companies' investors if they do not vote in alignment with their expectations. It was noted that many investors indeed expect profits to be maximized at least in the medium term, if not the short term, such as mutual funds that sell their shares to a large extent based on current performance.

FELLOW'S INSIGHT

Directors as Change Agents for the Corporation of the 21st Century

Ingvild A. Sørensen

Manager, Global Compact LEAD within the UN Global Compact

Traditionally the issues of corporate sustainability and of governance have been treated as unrelated subjects and kept siloed from one another, but these days it is simply impossible to not talk about them together. Boards of directors are responsible for the long-term interest of the corporation and in doing so, need to take account of all stakeholder groups.

It is firmly acknowledged among executives, investors and researchers that sustainability is key to support the growth and long-term profitability of a company. What started off as reputation management and as a reaction to external pressure has now evolved into companies trying to integrate Environmental, Social and Governance (ESG) factors into their business models and operations, because it makes business sense and presents opportunities no one can afford to miss.

It is increasingly clear that the fiduciary duty of the board includes a responsibility to effectively manage risks as well as innovation and growth opportunities related to ESG. With legal obligations developing across jurisdictions, substantial risks and the potential for liability related to sustainability action or inaction is emerging—both for the board as a whole and for individual directors. To successfully future proof business it is vital that boards understand the shifting structural dynamic of not only their industry, but of all global markets. Board ownership of sustainability is becoming a proxy for good governance.

To fulfil the potential for ESG to drive revenue, productivity and risk mitigation, the board must treat it as a strategic priority. It is not philanthropy; it is a set of highly material business issues that has to be clearly reflected in the company's

mission, strategy and approach to its stakeholders and competitors. The board has the authority to hire, direct and terminate its chief executive officer (CEO). Incorporating ESG criteria into CEO succession planning, executive recruitment and executive compensation is, no doubt, a powerful approach to advance leadership and sustainable performance. In its risk management, audit and monitoring role, the board has the mandate to ensure that ESG metrics and policies are linked to business performance. Leading boards are calling for ambitious policies across issues such as human rights, health and safety, corruption, and environment. Further, to hold leaders accountable, they are making sure that internal audit procedures are in place to assess cross-company compliance with sustainability commitments, policies and management systems. On disclosure and stakeholder engagement, common practice today is for boards to sign off on the company's sustainability report, but more than that, it has a key role to play in determining its focus on long-term viability, level of corporate disclosure, and the prioritization of its shareholders and other stakeholders.

Corporations are at a crossroads, and boards of directors need to guide the direction. How the board sets the tone from the top and the way they establish and promote a culture of diversity, integrity and sustainability both inside and outside the boardroom will be critical in the transformation towards the corporation of the future. True leadership and real potential will only come when directors move from a reactive compliance role to visionary long-term leadership.

The Composition and Role of the Board

What is the role of the board and who should serve on it? How effective are independent directors at monitoring management?

Boards around the world are composed in numerous variations and it is evident that who serves on the board dramatically affects the decisions made at that level. Participants across all represented geographies identified corporations' increasing focus on director diversity as a positive trend, serving to improve both social equality and corporate governance. Strong arguments exist that having more female directors on a board focuses that corporation's attention on producing more opportunities for female employees. Similarly, having employee representation on the board might focus attention on issues important to employees. While challenging to implement in practice, one European lawyer opined that increasing board diversity in smaller economies is particularly beneficial because traditionally the same people or types of people, especially those with political clout, tend to serve on the boards of large corporations and that results in less critical thinking within corporate leadership.

Not all participants agreed, however, that government-mandated diversity measures, for example the gender quotas imposed under German law beginning in 2016, are desirable or appropriate methods to achieving greater board diversity.³ One American participant posited that to the extent director diversity improves the nature and quality of decision making, a government mandate might be unnecessary because, presumably, the market would eventually reward that improved decision making on its own. Moreover, such a mandate may even turn out to be counterproductive if some otherwise qualified directors are overlooked.

³ See Alison Smale & Clare Cain Miller, "Germany Sets Gender Quota in Boardrooms," *New York Times*, March 6, 2015, at www.nytimes.com/2015/03/07/world/europe/german-law-requires-more-women-on-corporate-boards.html

1. Ingvild A. Sørensen

2. A working group in the Chinese Room



The participants also discussed the concept of director independence. A major trend in US regulation and governance procedure has been an emphasis on the monitoring model of director responsibility and the requirement that a majority of directors of publicly held corporations be independent. The law and organized markets require that the board's audit, compensation, and nominating committees be composed exclusively of independent directors, and under growing practice almost all directors of many US corporations are independent, with the typical exception of the chief executive officer.

The discussion of independent directors raised many questions. Who qualifies as an "independent" director – does it require independence from management, from major shareholders, from any shareholders, or something else altogether – and whose interests should independent directors serve? Is a long-time friend of a senior manager independent? What about a senior manager of a supplier to the corporation? A number of participants observed that, outside the US, ownership of a substantial amount of stock (including equity-based compensation) is considered inconsistent with director independence. One European lawyer contended that meaningful director independence cannot easily be guaranteed or enforced in most non-US jurisdictions because directors do not face the potential threat of the intense factual scrutiny that occurs in shareholder litigation under to the laws of certain US jurisdictions, particularly Delaware.

There was consensus that independent directors can indeed be an effective tool in fulfilling the board's oversight duties. It was nonetheless strongly emphasized that being "independent" is by no means a substitute for all directors maintaining a thorough and current understanding of the corporation's business and industry, the risks it faces, and the compliance mechanisms it has or should have in place in order to manage those risks. The participants questioned whether too many directors indeed lack sufficient knowledge in these respects and the example was given of bank



directors being sued by shareholders for not knowing enough about risk management to properly oversee their bank's trading activity. Considering the increasing amount of time and responsibility demanded of independent directors, one American director also queried at what juncture they stop being independent directors and start becoming management directors. It should also be noted that anecdotes differ and academic studies are inconclusive as to whether corporations with a majority of independent directors perform better than those without such a board composition, for example whether they get into less legal trouble.

Several non-American participants also elaborated on the prevalence and effectiveness of independent directors outside the US. It was noted that the concept of independent directors is generally much less utilized in Europe and Asia than in the US. Even when corporations in developing economies employ nominally independent directors on the board, those directors frequently are elected by majority shareholders, often founder families, and will rarely oppose them. Board advisors with experience in Japan in turn relayed how as a cultural matter there is often a lesser tendency among directors to directly question each other or to confront management, even when they believe something is amiss.

The participants' discussion of board composition also raised questions related to how boards should be structured. Might organizing as a dual-tier board similar to the German model of the *Aufsichtsrat* (supervisory board) and *Vorstand* (management board) be preferable to a single-tier board in some circumstances? What values, if any, might be served by separating the chair and chief executive roles and employing a lead director? What benefits and drawbacks may come from having particular interest groups represented on the board?

Turning next to the board's role, it is universally accepted that the board is to oversee the management's execution of their duties. Put differently, management is supposed to manage the business and the board is supposed to monitor management's performance of that function on behalf of the corporation's shareholders. Participants recognized that this separation of functions may as a practical matter hold less true in family- and government-controlled enterprises.

A major discussion theme emerging during the session was the significant extent to which increasing regulation is changing the role of directors across the world. Many directors and board advisors perceived a bothersome trend from their perspective, commonly described as ever-expanding regulation shifting directors' limited time and focus away from making decisions that serve the corporation's interests to making decisions that satisfy regulators' concerns. "Increased regulation has created pressures on directors,

“Increased regulation has created pressures on directors, particularly those in financial institutions, that have never existed before. These directors now have to understand management practices with a level of granularity that is unprecedented.”

“Regulations are requiring boards to become aware of very detailed management practices and that is really not the role of the board. There’s a real danger that we are going too far.”

particularly those in financial institutions, that have never existed before. These directors now have to understand management practices with a level of granularity that is unprecedented,” said one American lawyer in attendance. A European director agreed, adding that “regulations are requiring boards to become aware of very detailed management practices and that is really not the role of the board. There’s a real danger that we are going too far.”

There was consensus that increasing regulation and the accompanying litigation risk are now driving directors to act as “policemen” in fulfilling their oversight duties. Many participants strongly believed that this effect is misguided because “we need boards to first and foremost focus on fostering good management behavior rather than policing risks.” Other participants questioned at which point “oversight” turns into undesirable micro-management. It was further suggested that increasing regulation is pushing board composition towards homogenous background expertise in the relevant industry rather than a breadth of backgrounds and viewpoints from which boards may also benefit. Another participant suggested that the growing litigation risk is causing the talent pool for directors to shrink and otherwise qualified people to step aside.

Moreover, several of the participants expressed concern that regulators frequently respond to corporate governance breakdowns with an overbroad, one-size-fits-all approach that fails to account for crucial differences across companies and countries. This was seen as particularly problematic from the perspective of non-US firms subject to US regulations, because their boards often lack experience in the sort of regulatory compliance that is increasingly being imposed upon them. Participants agreed that “American litigation risk is changing the way boards throughout the world function now.” One European participant gave the example of the almost \$9 billion fine levied by the US Department of Justice against BNP Paribas, France’s largest bank, after which American litigation risk suddenly became a hot topic in French boardrooms when earlier the US was just seen as another foreign market.⁴ One Asia-based board advisor underscored the importance of providing continuous compliance training for board members and management executives precisely to avoid the types of competency pitfalls that increasing regulation is creating. Many participants acknowledged, however, that the board’s role in a company operating exclusively in one country can be radically different from that of the board of a multinational enterprise that is subject to regulators in multiple jurisdictions.

“We need boards to first and foremost focus on fostering good management behavior rather than policing risks.”

⁴ See Press Release, US Dep’t of Justice, “BNP Paribas Agrees to Plead Guilty and Pay \$8.90 Billion for Illegally Processing Financial Transactions for Countries Subject to US Economic Sanctions”, *US DOJ*, June 30, 2014, www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial

Rethinking “Independent Directors”

Siobhan C. Sweeney

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Recent regulation assumes that independent directors provide objective, shareholder-minded monitoring and that increasing their presence reduces agency problems and improves firm performance.¹

Research, however, has demonstrated that in reality the effect of independent directors on firm value is either insignificant or negative.² Despite this, it is widely agreed that independent directors who are powerful elevate shareholder wealth.³ Unfortunately, more often than not, independent directors are not powerful enough to achieve this duty.⁴

After the Global Financial Crisis, the criticism of independent directors turned to their lack of specialized experience, particularly in relation to the banking industry. As a result, more regulations were introduced in the US which required independent directors of listed companies to disclose qualifications, skills and experience, and in the UK a new code required boards to balance the chosen directors' skills, experience and knowledge of the company with director independence. These



Siobahn C. Sweeney

regulations are fiddling at the margins. The central focus should be on the culture of the board and its ability to perform its risk oversight function.

The February 2015 report by McKinsey & Company records “Boards aren’t working.”⁵ Only 14% of the 692 directors and executives surveyed selected “a reputation for independent thinking” as one of the key criteria that public company boards consider when appointing a new director,⁶ whereas independence and the ability to “question herd decision making” are one of the most important characteristics of a director.⁷

1 Cohen, L., Frazzini, A. & Malloy, C., “Hiring Cheerleaders: Board Appointments of ‘Independent’ Directors”, *Management Science* Vol 58, No 6, June 2012, pp1041.

2 Nguyen, B. & Nielson K., “The Value of Independent Directors: Evidence from Sudden Deaths”, *Journal of Financial Economics*, October 30, 2009

3 Fogel, K., Ma, L., & Morck, R., “Powerful Independent Directors”, Finance Working Paper No 404/2014, January 2014; *Harvard Law School Forum on Corporate Governance and Financial Regulation*, “Powerful Independent Directors,” R Small, May 19, 2014, blogs.law.harvard.edu/corpgov/2014/05/19/powerful-independent-directors

4 Ibid

5 Barton, D. & Wiseman, M., “Where boards fall short,” *Harvard Business Review*, February 2015

6 Ibid

7 Ibid

“Some of the worst corporate disasters have occurred due to an inability of the board to question and investigate.”

Independent thinking has been lost on boards in part because of the systemic failure of both the selection process and the board culture.

Inquiries have shown that some of the worst corporate disasters have occurred due to an inability of the board to question and investigate. Too often people are overconfident about their forecasts and risk assessments and consequently assess the range of possible outcomes too narrowly.⁸ They extrapolate too heavily from history, and this is exacerbated by confirmation bias, which means they lean toward a one-sided position and suppress conflicting information.⁹ When events unfold that are different from those they expect, it leads to even more irrational commitment and suppression of contradictory evidence.¹⁰ Objective risk management is an anathema to such groups; it is beyond their institutional capacity.

8 Kaplan, R and Mikes, A, “Managing Risks: A New Framework,” *Harvard Business Review*, June 2012

9 Ibid

10 Ibid

The Alternative: Contrarian Directors

An alternative to the current process is the introduction of a “Contrarian Director” to institutionalize the ability to stand outside the tide of groupthink and effectively warn and caution the board. This director should have an express duty to consider a complete range of outcomes (including pre-conceived “extreme” scenarios), question herd decision making, fully investigate issues without bias and recommend a course of action that is truly independent and impartial.

This director would have the duty, in respect of every recommendation of substance to the board to give careful consideration to possible opposing arguments and prepare a written report for the board.

The Contrarian Director’s appointment and role is designed to protect and encourage independent thinking and questioning and also to promote the same by others on the board and in senior management.¹¹

11 For further details, see “The Creation of the Contrarian Director and their role in achieving workable board independence and better risk oversight” by Siobhan C. Sweeney at www.risk.jbs.cam.ac.uk/riskprize/downloads/riskprize2015-sweeney.pdf



The Skills and Leadership Styles of Effective Directors

What skills and leadership styles contribute to effective directors? Has compensation of senior management gotten out of hand and, if so, what can the board do about it?

The question of what attributes and backgrounds directors should possess is much more than a theoretical exercise. Whether a board is comprised of financiers, lawyers, academics, executives from the same or another industry, former government officials, entrepreneurs, philanthropists, or others, their collective skills and leadership styles are at the very core of corporate effectiveness, accountability to shareholders, and responsiveness to social pressures. Given this reality, one European director remarked that “the composition of the board is more an art than a science.”

In some industries in the US, it is not unusual to recruit directors from among the people who work in the same broad industrial sector as the corporation, whether they are, for example, executives in similar companies or experienced investors in that sector. One board member with experience in India noted that the trend there is somewhat different, explaining that hiring academics and others from outside the sector is more commonplace except when it comes to the boards of financial institutions. Despite common practices, many participants suggested that bringing on directors from outside the particular industry can at times be highly beneficial. For instance, the directors of Tesla Motors, an American automotive and energy storage company, have almost no prior experience in the automotive industry,

“The composition of the board is more an art than a science.”





leading one American director to propose that corporations aiming to disrupt an industry may in fact wish to assemble a more diverse and nontraditional board.⁵

Participants noted that in the operation of the modern corporation, there now appear to be areas of particular concern to shareholders and external parties in which directors are expected to play a more significant and meaningful role than in the past. These include, for example, corporate strategy, risk spotting and compliance, cyber security, shareholder relations, management compensation, and social responsibility. The discussion therefore turned to how non-management directors may best involve themselves in such areas, if they do so at all. Relatedly, in considering the selection of non-management directors, the participants queried how important it is to select individuals with deep technical or industry expertise in addition to relevant oversight experience. Using a high-tech company as an example, there was at least some consensus in the room that it is more important for a director to understand the mechanisms in place for assessing the company's risk than to have a deep understanding of the technology itself.

In considering what makes a director effective, the participants acknowledged the inherent difficulties in assessing that quality. On the one hand, external assessments are unlikely to be productive simply because only one who has attended all meetings, or a substantial number of them, would be in a position to evaluate areas of effectiveness. On the other hand, self-assessments are difficult simply because most boards are properly designed to be collegial bodies and only in extreme cases are board members likely to be willing to criticize each other. These difficulties are exacerbated by

⁵ See Board of Directors, Tesla, ir.teslamotors.com/directors.cfm (last visited November 13, 2015).

ever-present liability concerns, the risk of which increases with less than favorable assessments. In light of all these challenges, the participants pondered what productive measures a board could possibly rely on to assess its own effectiveness. One solution offered was to hire an outsider who gathers handwritten assessments from the directors, then follows up on those assessment with personal interviews after which the written responses are destroyed, and thereafter briefs the chair of the nominating committee and in general terms the board. Alternatively, a well-established and respected general counsel may perform the same role as the outsider.

The participants' discussion also turned to another significant leadership challenge for directors, namely determining senior management's compensation. In a nutshell, the challenge for directors is how to creatively structure compensation to incentivize management to achieve the corporation's goals yet also provide reasonable certainty in their livelihood. A common response to this challenge involves making equity-based awards and options part of compensation packages, with the reasoning that managers will thus perform in ways that increase the corporation's value and thereby their equity in it. Moreover, provisions are now more frequently included in employment contracts that in simplified terms require the return of previously earned compensation when the corporation does poorly or violates the law. Another aspect to the compensation challenge is determining who has the independence and integrity to make the decisions involved, and in this regard, in addition to the use of independent directors, it has become increasingly common for boards to rely on independent compensation consultants and other advisors.

The board's control over executive compensation goes hand in hand with its oversight duties and has become a constant source of media attention, policy debate, and regulatory focus. Indeed, the participants overwhelmingly agreed that executive compensation, especially in the US, has become a controversial topic. One dismayed American director opined that executive compensation has come to be seen as a tool for penalizing poor performance through reductions, forfeitures, and givebacks rather than as a mechanism for incentivizing desired behavior. Part of the problem in the same director's view is that compensation committees are now too focused on how to potentially defend their decisions against shareholder dissatisfaction, which is often expressed in shareholder say-on-pay votes.

Not all participants agreed, however, that the amount of compensation per se has become excessive. Some participants in fact argued that the senior executives of some companies are undercompensated in relation to the risk of potential liability they have assumed. And rather than the amount of compensation itself, one American board advisor argued that it is the process

“Executive compensation has come to be seen as a tool for penalizing poor performance through reductions, forfeitures, and givebacks rather than as a mechanism for incentivizing desired behavior.”



and scrutiny surrounding the compensation system that has gotten out of control. Many participants further agreed that required compensation-related disclosures have only exacerbated the problem because transparency is driving up overall compensation levels. Yet other participants suggested that the growing use and influence of compensation consultants that provide market benchmarks are responsible for driving up pay.

Outside the US, vast cultural differences exist that impact executive compensation. Because executive compensation is nearly always lower outside the US, it is not seen as having gotten out of hand to the same extent. Some participants noted, however, that as foreign executives perceive themselves as potentially being at risk for liability under US regulations, they are beginning to demand corresponding pay increases. Similarly, as companies increasingly compete on a global scale, there is a growing need to attract American representatives who more frequently demand compensation commensurate with their US-based counterparts. Participants with experience in Asia presented the interesting counter-example of Chinese state-owned enterprises, which sometimes have to struggle with the opposite problem of under-compensation and how to attract and retain talent when the honor of serving the public is insufficient to overcome the problem.

“On executive compensation: First, the board must ensure that compensation is designed to incentivize management to lead the corporation in the direction the board has set; and second, the compensation must remain aligned with performance.”

The question becomes how one resolves all of the perceived issues in the executive compensation arena. In this regard, the participants identified two keys to establishing appropriate executive compensation: first, the board must ensure that compensation is designed to incentivize management to lead the corporation in the direction the board has set; and second, the compensation must remain aligned with performance. A few participants further suggested that an increased engagement of institutional investors with compensation committees could improve the situation, though not all participants agreed with this suggestion.

Re-making the Board

Cristina Ungureanu

Head of Corporate Governance, Eurizon Capital SGR

Boards of directors have been dramatically transformed, evolving from the traditional, rather reactive oversight and stewardship role, to the increasingly active, independent, more cohesive teams of today. Due to more demanding shareholders and overall greater demands on boards, serving as a director has become far more time-consuming and complex with defined responsibilities, both ethically and legally.

Boards are encouraged more and more to deliver on their core mission: providing strong oversight and strategic support for management's efforts to create long-term value, engaging more deeply and more publicly, spending more time exploring and communicating long-term strategy, and addressing any attendant reputational risk.

Depending on the circumstances of the companies that they serve, boards are at varying points on the road to development and engagement.

Companies need to strengthen boards' knowledge and help directors build, maintain, and refine a long-term mindset. A first step is firmly grasping what a director's "fiduciary duty" is. Most legal codes stress two core aspects of it: loyalty (placing the company's interests ahead of one's own) and prudence (applying proper care, skill, and diligence to business decisions). The logical implication is that the director should help the company thrive for years into the future. If directors can keep their fiduciary duty firmly in mind, big changes in the boardroom should follow. The discipline of keeping long-term value creation foremost in mind would help clarify choices and reform board behaviors.

The discussion that, until recently, centered largely on board diversity, has moved on with a new



Cristina Ungureanu

key word: board refreshment. This refers to the processes that are in place (or not) to ensure that so-called independent directors do not become entrenched and that new faces are brought on board in a timely and effective manner. The importance of board composition, director succession planning, board evaluation processes, and director skillsets are important common themes for Board refreshment.

The "new" boards rely on a combination of best practices that includes diversity, an independent non-executive chair, superior compensation practices and high-quality skillsets.

Board composition needs to be tailored to the specific circumstances of the company, its challenges, strategic ambitions and time demands.

“Boards that combine deep relevant experience and knowledge with independence can help companies break through inertia and create lasting value.”

It needs to consider the overall composition of the Board, including the independence of its directors, the combined skills and knowledge of the Board.

Boards ought to have a sufficient diversity of thought among its members, and the collective experience and expertise to be able to understand and address all of the key risks and opportunities facing the organization, including those created by digital challenges and increased global competition.

A highly effective board should steer a company financially, operationally and strategically toward strong performance and shareholder value.

Technology is driving change at high speed, and in many organizations the traditional skillsets of management do not leave them well prepared to respond. In this scenario, the role of the board is one of risk oversight and setting strategies to ensure that technologies are used appropriately. Therefore long experience may be counteracted by the need for new, innovative people (i.e., younger, less experienced but with certain skills e.g. IT, cybersecurity, social media, etc.).

Companies hence have the challenge to achieve the optimal balance between refreshing the Board and retaining valuable experience components such as director tenure and backgrounds and the relevance of continuity.

“Independent thinking” is one of the main criteria for company boards to consider when appointing new directors. Boards that combine deep relevant experience and knowledge with independence can help companies break through inertia and create lasting value.

Boards taking a strategic approach to director-succession planning is of critical importance to

investors. These responsibilities are particularly central to nominating committees, but certain investors will hold the entire board responsible for good stewardship of its own succession plan, hence also its process.

The trend also underscores the increasing value and complexity behind the role of a board director, which has evolved from attending a few meetings per year to being a hands-on ambassador and holding active dialogue with major shareholders, through robust, ongoing communication about strategy, governance and sustainability.

While board education programs have always been important, they are particularly so at a time when directors need to quickly get up to speed with complex new issues, and keep their knowledge up to date as those issues evolve. As they discuss complex matters, boards may also seek the advice of subject matter experts, both from within and outside the organization.

Regular, formal evaluations are of great importance in creating effective boards and these processes are becoming part of the landscape for most large, listed companies. To be effective, these evaluations must include looking at tenure and skills, but also how the board functions as a team and its dynamics.

All of these board initiatives must fit the company and industry context. But in total they could bring about a deep shift in the culture, behavior, and structure of public company boards. Over time nothing else will do more to ensure that corporations deliver the kind of sustained value creation that long-term shareholders expect and that our society deserves.

Internal and External Controls on Corporate Activity

How does a corporation ensure that its internal control functions, including legal, compliance, risk management, and internal audit, operate effectively? To what extent are efforts external to the corporation, such as criminal law, regulation, stock exchange rules, and private enforcement, effective in controlling corporate conduct?

Businesses around the world, global and local alike, fail or suffer systemic losses because they fail to anticipate risk. The key to avoiding this failure, said one American director, is to think about “risk” as broadly as possible. Another participant agreed, adding that companies too often rely on history to predict risk when it is the unprecedented risks that cause the most problems. Even those businesses that prioritize risk management may not be able to avoid failure, however, because as one academic cautioned, “what will bring down companies over the next ten years is likely to be a threat that we are not thinking about today. In retrospect it will seem perhaps obvious, but sitting here figuring out what that next threat is and how institutionally to be alive to it strikes me as a design challenge of a wholly different order.” Another director further offered that just because those who are ultimately responsible for risk management are heavily invested in the enterprise, it does not mean they will anticipate risk properly, giving the collapse of the American investment bank Lehman Brothers as an example. A third American director noted that another challenge to risk management is that corporations rarely if ever devise rewards for employees who escalate issues internally, which is particularly problematic in financial institutions where the incentives to avoid compliance can be enormous.



“What will bring down companies over the next ten years is likely to be a threat that we are not thinking about today.”

“The corporation must clearly establish reporting lines all the way up to the board that give the three lines a requisite degree of independence and allow them to adequately communicate any concerns.”

The “Three Lines of Defense” has become a popular model for conceptualizing the various roles and responsibilities that different groups within a corporation should assume for effective risk management and control. Briefly summarized, under the oversight and direction of the board and senior management, the business people whose activities create or manage the risks that contribute to or prevent the corporation’s objectives from being met serve as the first line of defense. The second line of defense consists of the corporation’s control functions, including its risk management, compliance, and legal departments, which are supposed to monitor and manage risk and control in support of the first line. Finally, the corporation’s internal audit makes up the third line of defense and is responsible for providing independent assurance to the board and senior management concerning the effectiveness of the first two lines.⁶

The participants raised the question of how the board can ensure itself that the three lines are operating effectively. There was consensus that the corporation must clearly establish reporting lines all the way up to the board that give the three lines a requisite degree of independence and allow them to adequately communicate any concerns. Another participant stressed that the lines of defense must be sufficiently compensated to attract the appropriate quality of people in the control functions. Compensation levels also signal senior management’s view of the importance to the enterprise of the internal controls. One participant noted that compliance functions too often are set up to fail, especially in smaller corporations and outside heavily regulated industries, because the tone from the top characterizes them as non-revenue-producers that contribute minimal value.

Focusing in particular on the first line of defense, the participants agreed that it plays an extremely important role. The idea is that if the first line is trained to understand the value of compliance and to abide by the corporation’s risk appetite, has absorbed company values, and cares about everyone doing business in accordance with those values, then the other two lines become much less critical. To make sure that the business people are acting as a solid first line of defense, it was suggested that the corporation should implement an interview policy across all levels with this idea in mind, and again that it should provide continuous compliance and risk management training.

Directors from across the represented geographies agreed that relying solely on high-level control and reporting functions is not ideal for assuring themselves that the first line is working properly. Directors can only feel

⁶ For more background information on the “Three Lines of Defense” model, see: Douglas J. Anderson & Gina Eubanks, *Leveraging COSO Across the Three Lines of Defense* (2015), available at www.coso.org/documents/COSO-2015-3LOD-PDF.pdf.



confident that the first line is effective if they spend the time to express their concerns and assure themselves that their priorities have been properly communicated to the whole team. One European director opined that those directors who serve on board committees should strive to dig deeper to find risks, which in that director's opinion requires actually getting to know the business people on a personal level beyond mere reliance on written reports. As many directors in the room recognized, however, it can be quite challenging for part-time, non-executive directors to find the time needed to get to personally know several levels of management. Fostering a culture of trust within the corporation therefore becomes crucial to risk management. In addition to internal controls, there are several external controls on corporate conduct, including, for example, criminal law, regulation, stock exchange rules, and private enforcement. The participants focused their attention on the recent trend of regulators to levy severe financial penalties and future disabilities on corporate violators. There was consensus that increasing enforcement efforts and the threat of heavy fines is indeed an effective measure in motivating corporations, especially those in heavily regulated industries such as financial services, to spend more time and resources on organizing and improving their risk management, compliance, legal affairs, and investor and public relations. A director with experience

“Large institutional investors wield significant influence over whether corporations are responsive to shareholder interests.”

in the UK noted, however, that while those working in the financial services industry notice the imposition of heavy fines, what seems to leave a more lasting impression is holding individuals liable, giving as an example the criminal conviction and imprisonment of a former trader for his involvement in the rigging of the London interbank offer rate.⁷ While prosecuting the persons engaging in or abetting the wrongdoing might more effectively deter violations, the point was made that it can be extraordinarily challenging to prove individual liability in this context.

Although in some ways effective, the participants agreed that the levying of severe financial penalties on corporations can prove problematic. One participant remarked that when a fine is levied against a corporation as such, its innocent shareholders ultimately bear the burden of paying it while the individual wrongdoers often escape comparatively unscathed. Moreover, the deterrence effect of financial penalties is sometimes lost on those in corporate leadership who simply view them as part of the cost of doing business. Another participant explained that an unintended consequence of the increasing number and amounts of penalties imposed on financial institutions is that many of today’s brightest business students are avoiding careers in financial services, which will end up hurting the industry in the long run.

Participants also discussed the role of shareholders and other stakeholders in holding directors and management accountable for corporate conduct. There was consensus that large institutional investors wield significant influence over whether corporations are responsive to shareholder interests, though participants with experience advising institutional investors emphasized that they often focus chiefly on two matters: the alignment of pay with performance and whether the independent directors can assure them that the board is functioning properly. The participants also noted that lenders and private equity firms act as external controls as neither is inclined to transact business with corporations that have significant governance, compliance or risk management shortcomings.

One participant floated the question of whether it would be beneficial to corporate governance if every country adopted the American ability and ease of bringing lawsuits based on corporate misconduct. The US has a well-developed class action system whereby the legal claims of many individuals can be aggregated and brought in a single lawsuit if certain procedural requirements are met. These class actions tend to be financed by counsel for

⁷ See: Chad Bray, “Former Citigroup and UBS Trader Convicted in Libor Case,” *New York Times*, August 3, 2015, available at: www.nytimes.com/2015/08/04/business/dealbook/former-citigroup-and-ubs-trader-convicted-in-libor-case.html

the class who expect to be paid a substantial portion of the amount recovered for the class. Proponents of class actions contend that they provide a financial rationale for pursuing claims that would not be economically feasible to bring on an individual basis and that they allow a meaningful opportunity to challenge corporate misconduct where regulatory oversight has proved inadequate. But class action as a form of litigation is controversial and its opponents often argue that it does little to penalize the actual wrongdoers and rather mainly ends up profiting the lawyers bringing the claims. Class actions are not available in many countries outside the US, though a few others, including Australia, Hong Kong, and the UK, are considering or have adopted the system in some form.

Another major difference between the US and other jurisdictions is that each party to an American lawsuit is generally responsible for paying its own attorney fees (the so-called “American Rule”) while in many other countries it is customary for the losing party to a lawsuit to pay the other side’s attorney fees (often referred to as the “English Rule”). Relatedly, in the US lawsuits may be filed on a contingency fee basis, meaning the plaintiff’s lawyer funds the cost of litigation in return for a percentage of any recovery or settlement, while this type of fee arrangement is not recognized or is much more limited in other countries. A problem with class actions based on a contingent fee arrangement is that the huge financial incentive provided to lawyers easily leads to abuses, one of which is that the considerable cost of defending against the suit and the perceived unpredictability of juries may lead a corporation facing a weak class action claim to settle it rather than





defending against it even though the corporation has committed no wrong.⁸ One American attorney suggested that a loser-pays system and the lack of contingency fees in non-US jurisdictions significantly deter litigation as an effective external check on corporate governance. Another American attorney disagreed and suggested that, if used in the US, a loser-pays system would incentivize defendants to actually litigate cases rather than settling them and also motivate class action lawyers only to bring claims they believe have a good chance of succeeding rather than merely seeking to profit from the high cost of defending a lawsuit.

8 Jed S. Rakoff, *The Cure for Corporate Wrongdoing: Class Actions vs. Individual Prosecutions*, *New York Review of Books* (November 19, 2015), www.nybooks.com/articles/archives/2015/nov/19/cure-corporate-wrongdoing-class-actions

The Role of Shareholders and Other Stakeholders of the Corporation

What role do shareholders and other stakeholders play in corporate governance?

Closely related to the foregoing topic, the participants discussed the role of shareholders and other stakeholders and in particular the relative prevalence of shareholder activist investing around the world.

Shareholder activist investing – where, in its most basic terms, an investor takes a position in a publicly traded company and then seeks, usually quite soon after making its investment, to exert influence over the company to make changes that the investor thinks will result in a higher company stock price – is now a stand-alone investment strategy in its own right that is being pursued by both established activists and other money managers that had not previously employed this strategy.⁹

It quickly became apparent from the conversation in Salzburg that activist investing affects corporate governance to a much greater extent in the US than in other countries.¹⁰ For instance, participants discussed the fact that activist investors in Japan tend to be less successful because of a higher tolerance for corporations to forgo the sort of short-term profits advocated by many activist investors and instead focus on more long-term objectives. That said, activist investors operating in Japan that are more aligned to long-term shareholder value have recently enjoyed more success. In other countries around the world, from Austria to China to India, participants relayed that shareholder activists have begun to appear gradually in the past decade but are facing obstacles to exerting any real power because many companies are family-owned or controlled by a majority shareholder. Because of the highly concentrated ownership of shares in many European companies, some participants suggested that shareholder activism may never become a pervasive phenomenon in Europe. On the other hand, one participant opined that the impact of shareholder activism in Hong Kong has been positive in the sense that it has pushed management to operate more efficiently and therefore predicted that it will continue to grow in popularity.

⁹ Clare O'Brien, Rory O'Halloran & Michael Dockery, "Activists at the Gate: The Continuing Evolution of Shareholder Activism in the US", *boardmember.com* (Mar. 10, 2014), available at www.shearman.com/~media/Files/NewsInsights/Publications/2014/03/Boardmember_Activists-at-the-Gate-O'Brien-Dockery-OHalloran-MA-051014-Article.pdf

¹⁰ For a recent analysis of how activist investing is impacting the largest public companies in the U.S., see "Shearman & Sterling LLP, 13th Annual Survey Of The 100 Largest US Public Companies: Corporate Governance & Executive Compensation 2015," at 2-5, available at www.shearman.com/en/newsinsights/news/2015/10/corporate-governance-and-executive-comp-survey

“Outside of the USA, shareholder activists have begun to appear gradually in the past decade but are facing obstacles to exerting any real power because many companies are family-owned or controlled by a majority shareholder.”

Turning back to the US, several participants thought that companies may make more short-term decisions due to activist investors than what is optimal. For example, many participants agreed that activist investors are forcing corporations toward financial objectives and away from more socially desirable objectives because few activists are focused on the social perspective. Some participants nonetheless expressed the view that certain activist investors have had a positive effect too by providing constructive ideas for how to improve a corporation's business and generally leading to improved engagement with its shareholders. The notion that activist investors are mere disruptive agitators is dissipating, according to one American executive.

The participants next discussed how corporations should respond to activist investors, and the degree to which directors should be directly involved in that response. One American attorney noted that there has been an evolution in how corporations address activist investors. Whereas corporations used to avoid engagement with activist investors, nowadays corporations are becoming more willing to at least hear them out when they request a meeting. It is better to keep relationships with activist investors cordial and collaborative, added an American director. Another director noted, however, that smaller activist investors may be more challenging to engage with because part of their agenda is to raise money for their funds and they sometimes attempt to do so by relying on media publicity generated as a result of open disagreement with incumbent management and directors. Further, on the narrower issue of whether directors should meet with activist investors outside management's presence, a number of participants contended that doing so sends a message of distrust in management and should be avoided.

Despite disagreement about the extent to which corporations and directors should engage with shareholder activists, there was clear consensus that





activist investors are changing the role of directors. According to one participant, if directors are unable to articulate to its large investors exactly how they wish to move the corporation forward, the large investors have become increasingly willing to consider alternative ideas by activist investors who sometimes seek to replace those directors. That is why many directors must now anticipate possible approaches by activist investors and regularly engage with their companies' largest investors before activists appear. A related question that was raised but not resolved during the session is how to reduce the tension created when activist investors succeed in electing one or more directors to the board. The law is reasonably clear that a director owes duties to the corporation itself and the shareholders as an entity, and not to the shareholder that got him or her elected. Participants questioned whether that was a realistic expectation.

Finally, the participants discussed the role and influence of proxy advisory firms. In essence, shareholders of public companies hire proxy advisory firms to make recommendations on how to vote on particular issues at a corporation's shareholder meetings. There was consensus that proxy advisory firms have acquired significant influence in the marketplace, though some participants emphasized that large institutional investors now perform more and more of their own research and create their own policies before voting on contentious issues, in addition to subscribing to the advice of proxy advisors. One participant also noted that due to the limited number of voting choices, the fact that an institutional investor votes in alignment with the recommendation of a proxy advisor can be misleading in terms of the proxy advisor's actual influence because the institutional investor could have arrived at the particular result on very different grounds.

FELLOW'S INSIGHT

DuPont and Shareholder Activism

Jodie A. Kirshner

Senior Fellow, Kresge Foundation; Visiting Scholar and Lecturer, Columbia Law School

In May 2015, the American chemicals company E.I. DuPont de Nemours emerged victorious from a bruising four-month battle against an activist investor that had sought to take control of the board of DuPont. DuPont ranked as the largest public company ever subject to a proxy fight for board seats. The experience of DuPont raised questions over who best governs a company – established board members or nimble investors seeking increased dividends – and demonstrated the high costs of shareholder activism.

DuPont became a target of Trian Fund Management in spite of the reputation of DuPont as a generally well-run company. DuPont consistently had earned high returns, and had beat the S&P 500 Index for a number of years. Nevertheless, the fund argued that its own leadership could save the company \$4 billion in expenses. After gaining a 2.7% stake in DuPont, which made the fund the fifth-largest shareholder in the company, the fund made a bid for four seats on the DuPont board. The fund intended to use the seats to spin off divisions of the company, which the fund claimed would unlock more value for shareholders.

Today, there exist more than 400 activist funds, with access to more than \$100 billion in assets to invest. Some have predicted that shareholder activism will reach its highest level in 2015. In the first quarter of 2015, 54 American companies outside of the finance sector became the targets of activism. The figure represented a 26% increase over the 43 companies targeted in the first quarter of 2014. The technology sector has proved the most susceptible to activists.

Recent studies, however, have documented negative consequences of shareholder activism.

One such study has demonstrated that activism deters investment in research and development, since investment in research and development benefits long-term, and not short-term, investors. The credit rating agency Moody's has published a report that details how shareholder activism increases risks at companies, to the detriment of credit investors. The increased risk generally is caused by changes in corporate direction and strategy.

While many activist investors have stated a desire to improve shareholder value by waging proxy contests, the cost of such contests also has proved significant. DuPont beat back the challenge from Trian Fund Management narrowly—and at a high cost. Not only did DuPont invest heavily in the



Jodie A. Kirshner

“The experience at DuPont represents both a significant blow to activist investment and a case study of the heavy toll of shareholder activism on companies.”

victory, in both money and time, but the fund invested heavily as well.

DuPont spent \$15 million to fight the fund. DuPont cast the fund as a short-termist antagonist. The company identified factual errors made by the fund and also articulated a clear corporate strategy. Ultimately, the shareholders of DuPont backed all twelve directors nominated by the company management. The twelve directors, however, won by only 52% of the vote.

The fund lost despite spending \$8 million on its campaign. Although the efforts of the fund attracted the support of proxy advisors, institutional investors nevertheless sided with management.

The institutional investors cited as reasons for voting against the fund the strong performance of the company, concerns about the effect of the fund proposals on the company credit rating, and the attempts by management to reach a settlement with the fund.

The experience at DuPont represents both a significant blow to activist investment and a case study of the heavy toll of shareholder activism on companies. Because of the proxy battle, DuPont recently reported its largest quarterly drop in earnings in more than two years. DuPont also engaged in spinoffs which reflected Trian’s strategy.





Victor T. Nilsson

Conclusions of the Session

Enhancing corporate profit and shareholder gain remain the foremost purpose of corporations worldwide, and investor expectations generally constrain the pursuit of other objectives. To the extent possible, it is desirable for corporations to focus on profit-maximization as a long-term objective, which may allow for flexibility in the short-term to satisfy stakeholders in addition to shareholders. Responsible citizenship is an appropriate corporate purpose when justified as leading to enhanced profitability in the long run, but generally not as a valid independent purpose of the corporation.

The role and structure of the board will continue to evolve in response to further developments in the regulatory landscape, social values, and cultural norms. There can be no question that serving as a director in today's globalized world is an undertaking that is unlikely to become any less challenging.

The skills and leadership styles of directors are at the very core of corporate effectiveness, accountability to shareholders, and responsiveness to social pressures. The personal qualities of individual directors – intelligence, relevant experience, willingness to devote their time, integrity, and spirit of independence – are key. But assessing the effectiveness of a director is inherently difficult, and assembling a board is more an art than a science. Relatedly, although not perceived as a problem to the same extent outside the US, determining senior management's compensation has grown to pose a significant leadership challenge for directors.

Businesses around the world fail or suffer systemic losses because they fail to anticipate risk. Directors must continuously strive to ensure themselves that all three lines of defense comprising the corporation's internal controls are operating properly, which requires more than merely relying on written reports but rather meeting with several levels of management and getting to know the business people. External controls, such as the prospect of litigation, intrusive regulatory oversight, and the threat of heavy fines, are effective in motivating corporations to spend more time and resources on risk management and compliance, but it is not a problem-free approach and has unintended and undesirable consequences.

Shareholder activist investing is a much more prevalent phenomenon in the US than in other countries, but is becoming more significant in some other jurisdictions as well. Though there are opposing views on the positive and negative impact of activist investing, and how directors should respond, it is undoubtedly changing the role of directors who must now anticipate advances by activist investors and engage more regularly with their companies' large investors.

The Salzburg Global Forum on Corporate Governance – Next Steps

Charles E. Ehrlich

Program Director, Salzburg Global Seminar

Salzburg Global Seminar launched the Salzburg Global Forum on Corporate Governance at this session to facilitate critical thinking about changing regulatory and economic environments, comparative practices, and the roles and duties of directors. The 2015 inaugural session in Salzburg provided baseline definitions of the roles of directors in multinational corporations, building common understanding of corporate challenges and best practices in different jurisdictions.

The next session of the Forum, from 29 September to 1 October 2016, will concentrate on how boards can best deal with the conflicting pressures and demands on multinational corporations. The program will examine multinational corporations as global citizens, asking how directors can balance conflicting norms across the global economy, complying with legal requirements in multiple jurisdictions, while taking into account changing normative pressures, including societal expectations on the environment, human rights, labor, and social reforms. Successful navigation through these issues enhances corporate reputation and market success, while scandals erode public trust and increase calls for greater regulation. Directors must understand and anticipate shifting regulatory and societal expectations in order to discharge their legal and fiduciary duties to their corporations and shareholders. Directors must ensure compliance with applicable law while also promoting a corporate culture which is sensitive to constituency expectations. Forum participants – including directors, senior management, lawyers and other corporate advisors, policymakers, academics, and representatives of other key interest groups – will develop concrete recommendations and conclusions regarding best practices for the primary tasks of the board, exploring techniques for keeping the board alert, active, and effective in meeting legal and fiduciary duties while contributing constructively to society.



Session Participants

(Biographies correct at time of session – October 2015)



Xavier Adserà, Spain

Xavier Adserà is chairman of Tamaxage, Spain. He is dedicated to entrepreneurial projects through his own investment firm. From 2011 to May 2015, he held the post of CEO of Veremonte, a London-based private equity firm of Spanish shareholding. Among other projects, Veremonte was the promoter of BCN World (a city of entertainment and gaming, family leisure and tourism in Tarragona, Spain) and Formula-E (FIA formula-e championship). Within Veremonte, Mr. Adserà was the chairman of BCN World and director and member of the executive committee of Formula-E Holdings. Between 2005 and 2011, he was the chairman of Natraceutical, a biotech company listed on the Spanish stock exchange. He was also a member of the board of directors of public company Natra -Natraceutical's parent company. Parallel to these activities, from 1992 to 2013 he was one of the founding partners and shareholder of Grupo Financiero Riva y García, one of the leading independent investment banks in Spain, with four domestic offices and one office in Morocco. In 2006, Mr. Adserà was appointed chairman of the Spanish Institute of Financial Analysts and of its Foundation of Financial Studies, a position that he held for four years, up to June 2010. He graduated in business from ESADE Business School and holds a master's degree in business administration from ESADE, ranked top ten in the world in MBA programs. He has attended several post-graduate courses, the most significant of which being held at Harvard Business School, Sloan School of Management (MIT – Boston) and Stern (New York University). For over 15 years, he was head professor of long-term financial strategy at ESADE Business School (Barcelona-Spain) and he remains a member of the professors' senate.



Laurence W. Bates, USA

Laurence Bates is the chief legal officer at Lixil Group Corporation, where he serves as executive officer and senior managing director, holding overall legal and compliance responsibility for the entire group. Prior to joining Lixil Group, Mr. Bates worked at General Electrics (GE), where he served in successive roles as general counsel of GE Medical Systems Asia, GE Capital Japan, and most recently, GE Japan. Prior to joining GE, he worked with the international law firms Morrison & Foester based in Tokyo, and with Paul, Weiss, Rifkind, Wharton & Garrison, based in New York and Beijing. In addition, Mr. Bates taught international economic law at Tokyo University under the auspices of a Fulbright Senior Professional Research Grant and was a Yale-China teaching fellow in the Department of Foreign Language and Literature at Wuhan University in Hubei, China. Mr. Bates holds a B.A. in Chinese studies and economics from Yale University, and a J.D. from Harvard Law School, USA.

Brandon Becker, USA

Brandon Becker is a former executive vice president and chief legal officer at TIAA-CREF, where he led the company's compliance, corporate governance, corporate secretary, government relations, public policy, and legal functions. Previously, Mr. Becker was a partner in the securities department at Wilmer Hale, where he was chair of the Broker-Dealer Compliance and Regulation Practice Group. He specialized on a range of regulatory, financial and corporate matters on behalf of public companies, banks, broker-dealers, trade associations, and other organizations. Prior to joining the firm, Mr. Becker was a lawyer at the United States Securities and Exchange Commission (SEC). He served as director for the SEC's Division of Trading and Markets and was responsible for the program overseeing securities professionals and markets. He also served as a staff member of the President's Working Group on Financial Markets, as a member of the Financial Products Advisory Committee of the Commodity Futures Trading Commission, and as the SEC's representative to the Secondary Markets Working Party of the International Organization of Securities Commissions. Mr. Becker is a former chair of the Subcommittee on Market Regulation of the Federal Regulation of Securities Committee of the American Bar Association Section of Business Law. He also serves on the Investor Advisory Group of the Public Company Accounting Oversight Board. Mr. Becker has taught various courses on corporate law and securities regulation at American University, George Mason University, and Georgetown University, and has published widely on these topics. He holds a B.A. from the University of Minnesota, a J.D. from the University of San Diego School of Law, and an LL.M from Columbia Law School, USA.



Winfried Blaschke, Germany

Winfried Blaschke is deputy head of the Corporate Affairs Division at the Organisation for Economic Cooperation and Development (OECD) in Paris, France, where he supervises the OECD Secretariat's work for the corporate governance committee, which brings together officials and experts on corporate governance from the OECD and beyond, and functions as the main international standard setter in the area of corporate governance (G20/OECD Principles of Corporate Governance). He was also a member of the Basel Committee's Corporate Governance Task Force. Prior to joining the OECD, Mr. Blaschke worked at the European Commission in Brussels on financial regulation and as a trade negotiator, at the European Central Bank in Frankfurt on financial stability, and as an economist at the International Monetary Fund in Washington, D.C. on the launch of the Financial Sector Assessment Program and on stress testing. Before switching to the public sector, Mr. Blaschke worked in the private financial sector, at the Chicago Board of Trade and at Citibank, mainly in the derivatives area. He is a Fellow of Salzburg Global Seminar.





Byron L. Boston, USA

Byron L. Boston is president, co-chief investment officer, and board member at Dynex Capital Inc. (DX) in Glen Allen, Virginia, USA. He is a seasoned investment professional with an extensive background in the fixed income capital markets. He has served in multiple leadership positions within the asset management/investment banking community, including building two successful public companies. Prior to joining DX, Mr. Boston started Sunset Financial Resources and served as a senior corporate officer in the investment division at Freddie Mac. Mr. Boston holds an M.B.A. in finance and accounting from the University of Chicago and a B.A. in economics from Dartmouth College, USA. Mr. Boston is a member of the board of Salzburg Global Seminar.



John J. Cannon III, USA

John J. Cannon is a partner in the Executive Compensation & Employee Benefits Group of Shearman & Sterling LLP, and chair of the firm's Corporate Governance Advisory Group. Mr. Cannon is an inaugural fellow of The American College of Governance Counsel, and is a frequent speaker to boards of directors, professional groups, and law students on executive compensation and corporate governance matters as well as the international regulation of pay in the financial services industry. In his practice, he focuses on all aspects of corporate governance and executive compensation and benefits, including state corporation, securities, banking, bankruptcy, employment and tax laws, and the Employee Retirement Income Security Act. Mr. Cannon has extensive experience in advising corporations and boards of directors on management succession, shareholder engagement, compliance with Dodd-Frank and Sarbanes-Oxley, and the employee issues raised in the mergers and acquisitions context, including in cross-border transactions. He is a graduate of Harvard College and the New York University School of Law, USA.



Mahendra K. Chouhan, India

Mahendra Chouhan is the chairman of Mahendra & Young Knowledge Foundation and vice chairman of the global advisory board at the Asian Centre for Corporate Governance & Sustainability in India. He is a consultant for the International Finance Corporation, the World Bank group, and is a member of Securities Exchange Board of India committee on corporate governance, a member at the Ministry of Corporate Affairs of the Government of India's Committee for National Policy on Corporate Governance, a member of the managing committee of Indian Merchants Chamber, and a member of the global board of the International Institute of Governance & Leadership in the Netherlands. Prof. Chouhan was recently elected as a member of the Independent Appointment Committee in the Netherlands and to the council of the International Integrated Reporting Council in the UK. In addition, Prof. Chouhan teaches corporate governance and corporate social responsibility in numerous reputed Schools and Universities internationally. Previously, he held leadership positions in non-profit organizations and served as president of Bombay Management Association. Prof. Chouhan is a Fellow of Salzburg Global Seminar.

Seán M. Cleary, South Africa

Seán M. Cleary is chairman of Strategic Concepts (Pty) Ltd, managing director of the Centre for Advanced Governance, founder and executive vice chair of the Future World Foundation, and a director of companies. He served on the staff of the Commander Maritime Defence in South Africa, before diplomatic service in Iran, the USA and Namibia. As chief director in Namibia he initiated negotiations between all political parties, the release of political prisoners, and the adoption of a Bill of Rights, en route to independence. He is a faculty member of the Parmenides Foundation and lectures on global corporate strategy at business schools in the USA, Europe, and South Africa; on conflict resolution and development economics at American and European universities; and on national security management at the South African Defence Staff College. He is chairman of the advisory boards of the Global Economic Symposium and Operation Hope, a member of the Board of the Carbon War Room, a trustee of the South African Foundation for Conciliation, and a strategic advisor to the World Economic Forum. He was a member of the Facilitating and Preparatory Committees of the South African Peace Accord and chairman of the Working Group on the Code of Conduct for Political Parties and Organizations, an EXCO member of the NEPAD Business Steering Group, and senior advisor to the Arab Business Council of the World Economic Forum. Mr. Cleary studied social sciences and law at the University of South Africa, the University of Cape Town, and Pahlavi University in Iran. He holds an M.B.A. from Henley Management College, UK. Mr. Cleary is a member of the board of Salzburg Global Seminar.



Simon Croxford, UK

Simon Croxford is general counsel at the Group Centre Legal for Barclays, UK, where he is responsible for providing legal advice to the Barclays boards of directors and executive committees as well as leading legal coverage of the finance and treasury functions on mergers and acquisitions, employment, financial crime, and competition matters. He is a member of the Barclays Senior Leadership Group and the Legal Executive Committee. Prior to his current appointment, Mr. Croxford was general counsel for Barclays Investment Bank as Europe and the Middle East, and global head of legal for Barclays Non-Core, a role in which he was a member of the Barclays Non-Core Management Committee. Previously, he was general counsel for Barclays Asia Pacific, where he was responsible for legal coverage of all Barclays businesses as well as offshore operations in the region. He was also a member of Barclays Asia Pacific Executive Committee. Prior to joining Barclays in 2005, Mr. Croxford worked at UBS in London and Linklaters in both London and Paris. His background is primarily in international corporate finance and capital markets. Mr. Croxford holds law degrees from King's College London and the University of Paris I (Pantheon-Sorbonne).



Jan Ernst de Groot, Netherlands

Jan Ernst de Groot is the chief legal officer at Royal Ahold, the Netherlands. Previously, he served as managing director and general counsel at TNT Express, and as managing director and member of the board at KLM Royal Dutch Airlines. Before joining KLM, he worked as an attorney at the offices of De Brauw Blackstone Westbroek in The Hague. His professional credentials include vast experience in cross-border mergers and leadership on sustainable development. Mr. de Groot serves as chair of Wetlands International; chair of



HIVOS Humanist Institute of International Cooperation; and chair of the REDD+ Business Coalition; he is a member of the advisory board of Staatsbosbeheer and Landschap Noord-Holland; a member of the board of the Hermitage Museum Amsterdam; ambassador of the Platform on Biodiversity, Ecosystems and Economy; and member of the WorldConnectors. Mr. de Groot studied international law at the University of Leiden and is an alumnus of Harvard Business School. Mr. de Groot is a member of the board of Salzburg Global Seminar.



Francesco De Prospero, Italy

Francesco De Prospero is a corporate attorney at the international law firm Ropes & Gray, USA. His practice focuses on mergers and acquisitions deals, both domestic and cross-border, with an emphasis on transactions involving strategic intellectual property assets. He also performs diligence on non-US targets with regard to their internal governance and anticorruption compliance. Before joining Ropes & Gray, Mr. De Prospero worked in the private and public sectors, both in Europe and in the USA, and had the opportunity to experience the approach to corporate governance issues from two particularly significant perspectives: the Delaware judiciary and the U.S. Securities and Exchange Commission. Mr. De Prospero has a full legal education both in the United States and in Europe. He holds three graduate degrees, including a J.D. and a Masters in comparative law from the University of Pennsylvania. He holds another J.D. from the University of Milan, Italy, where he also attended the graduate school for legal professions. While attending Penn Law, he was a Salzburg Cutler Law Fellow and an active participant of the initiatives of the Institute for Law & Economics. Mr. De Prospero is a Fellow of Salzburg Global Seminar.



Bharat N. Doshi, India

Bharat N. Doshi is the chairman of Mahindra & Mahindra Financial Services Limited, India's largest rural non-banking finance company. He is also an independent director and chairman of the audit committee of Godrej Consumer Products Limited. Previously, Mr. Doshi was executive director and group chief financial officer of Mahindra & Mahindra Limited, the flagship company of the USD 16.9 billion Mahindra Group. Mr. Doshi is actively involved with the work of chambers of commerce and industry in India and is a member of various expert committees which influence economic and business policies of the government. He is currently a member of CII National Council on Corporate Governance & Regulatory Affairs and serves on the advisory board of Excellence Enablers, an organization committed to promoting corporate governance in India. Previously, Mr. Doshi was a member of a Reserve Bank of India (RBI) constituted Working Group to examine a range of emerging issues pertaining to regulation of the non-banking financial companies sector, a member of RBI's committee on comprehensive financial services for small businesses and low-income households, and a member of the Securities and Exchange Board of India (SEBI) committee on disclosures and accounting standards. He has also served as president of Bombay Chamber of Commerce and Industry. He holds both bachelor's and master's degrees from the University of Mumbai. Mr. Doshi is a Fellow of Salzburg Global Seminar.

Stephen Fraidin, USA

Stephen Fraidin is vice chairman of Pershing Square Capital Management LP, USA. He focuses on the representation of major companies and investment groups, acquisitions, proxy contests, and the representation of special committees and boards of directors regarding mergers and acquisitions, corporate governance, and other matters. Mr. Fraidin is listed among ten “Most Highly Regarded Individuals” worldwide by *The International Who’s Who of Mergers & Acquisitions Lawyers* and named one of the ten most innovative lawyers in North America by *The Financial Times*. In addition, he was selected by Law360 as a most valuable player (MVP) of the Year 2013 for mergers and acquisitions and is annually recognized in *Chambers USA* and *Chambers Global*. Mr. Fraidin has received recognition from *The American Lawyer* as one of their “dealmakers of the year” twice in the past four years. He has been honored by Yale Law School with the Simeon E. Baldwin Award for his legal creativity and teaching skills. Mr. Fraidin holds a B.A. from Tufts University and a law degree from Yale University, USA.



Joel Friedlander, USA

Joel Friedlander is a partner of litigation boutique Friedlander & Gorris, P.A., which was named 2015 “Delaware Firm of the Year” by *Benchmark Litigation*. For his recent success in *In re Rural/Metro Corporation Stockholders Litigation*, Mr. Friedlander was profiled in *The Wall Street Journal* and named “Litigator of the Week” in *The Am Law Litigation Daily*. He was lead counsel for the stockholder class in *In re Activision Blizzard, Inc. Stockholders Litigation*, which resulted in the largest cash settlement in Court of Chancery history. Mr. Friedlander serves on the board of advisors of the University of Pennsylvania Institute of Law and Economics, as president of the Delaware Region of Jewish National Fund, as a director of Rodney Street Tennis & Tutoring Association, and as a member of the Delaware State Advisory Committee of the U.S. Commission on Civil Rights. Some of his publications include “Overturn Time-Warner Three Different Ways,” “The Rule of Law at Century’s End,” and “Corporation and *Kulturkampf*: Time Culture as Illegal Fiction.” Mr. Friedlander has spoken on corporate law issues at the University of Pennsylvania Law School, Harvard Law School, New York University School of Law, Widener University School of Law, the Mercatus Center at George Mason University, and Hebrew University in Jerusalem. He is a graduate of the University of Pennsylvania, where he received a B.S. from the Wharton School and a J.D. from the School of Law, where he was executive editor of *The University of Pennsylvania Law Review* and a recipient of the Fred G. Leebron Award for Constitutional Law.



Daniel R. Fung, China

Daniel R. Fung is senior counsel of the Hong Kong Bar, specializing in constitutional and human rights law and in commercial litigation, and has also served as chairman of the Broadcasting Authority. He is a director of the Hong Kong Securities & Future Commission, a member of the World Bank International Advisory Council on Law & Justice, and special advisor to the United Nations Development Program on corporate governance in China and on rule of law in Cambodia and Laos. In 1994, Mr. Fung became the first person of Chinese descent to serve as solicitor general of Hong Kong, a position he occupied for three years under British rule and for a further year as the first solicitor general of Hong



Kong after reversion to China. He was responsible for the Government's legal policy and carried sub-portfolios including advising on the Basic Law and Hong Kong's constitutional development on reversion to Chinese sovereignty, overseeing law reform in Hong Kong as well as monitoring legal development in China. In 1998 and 1999, he was a visiting scholar at Harvard Law School and senior visiting fellow at Yale Law School. He was Distinguished Fulbright Scholar for Hong Kong for the Year 2000. He holds LL.B. and LL.M. degrees from University College London. Mr. Fung has served as a faculty member at numerous Salzburg Global Seminar programs and was vice chair of Salzburg Global's board of directors.



Kyra K. Hazou, UK

Kyra K. Hazou is a corporate lawyer whose career has encompassed private legal practice in New York and London and 15 years with an investment bank, as managing director and regional counsel for Salomon Brothers, later Salomon Smith Barney/Citibank in New York and London. Upon retiring from full-time employment she has sat on the board of directors of the Financial Services Authority in the UK for two statutory terms, sitting on the risk and audit committees. Since 2011 she has sat on the board of directors of Société Générale in Paris, France, and is a member of the risk and audit committees. Ms. Hazou has published articles relating to financial instruments and has spoken on a regular basis at financial and legal conferences on legal aspects of financial transactions, European Union issues, and the role of women on boards. She has sat on numerous financial policy panels and boards, such as the board of directors of the Futures and Options Association, and on non-profit boards, such as the board of directors of Shared Experience Theatre. Ms. Hazou holds a B.S.F.S. in international politics from the School of Foreign Service at Georgetown University and a J.D. from Georgetown University Law Center, USA.



John Hinshaw, USA

John Hinshaw is executive vice president and chief customer officer at Hewlett Packard Enterprise, where he is responsible for strategic accounts, strategic alliances, customer advocacy, information technology, and sales operations. He also oversees strategic relationships with many of HP's largest customers and is the executive sponsor for the company's business in the UK, Ireland, and India. He is actively involved in Hewlett-Packard Ventures and the governance of Hewlett-Packard Financial Services. Prior to joining HP, Mr. Hinshaw worked at The Boeing Company, most recently leading the Information Solutions business unit. He was also Boeing's chief information officer and led the company-wide corporate initiative on information management and information security. Before that, he spent 14 years at Verizon, where he served as senior vice president and chief information officer of Verizon Wireless. He also held a number of key positions focused on enabling business growth, reducing costs and improving business productivity. Earlier in his career, he served as a consultant with Accenture. Mr. Hinshaw is a member of the board of directors of the Bank of New York Mellon, DocuSign, and the National Academy Foundation. He has also served on numerous technology company advisory boards and non-profit boards. In addition, Mr. Hinshaw and his wife, Julia, have established a foundation with a focus on education, cancer research, and other charitable

needs. Mr. Hinshaw holds a bachelor's of business administration in computer information systems from James Madison University, USA.

Klaus J. Hopt, Germany

Klaus J. Hopt is a professor and director emeritus at the Max Planck Institute for Comparative and International Private Law in Hamburg, Germany. Previously, he held professorships in law in Tübingen, Florence, Bern, and Munich, and was visiting professor at a number of universities, including University of Chicago, Harvard University, New York University, and Columbia University. Prof. Hopt's professional career includes serving as judge at the State Court of Appeals of Stuttgart, Germany. He is a member of the supervisory board of the Deutsche Börse AG, and chairman of the Scientific Council of the Max Planck Society, as well as member of various state expert commissions, boards, and panels. In addition, he was an expert for the German Parliament, the German Federal Constitutional Court, various German ministries, the German Central Bank, the European Commission, Bulgaria, and the World Bank. Prof. Hopt is author, editor, and co-editor of a number of publications in the field of corporate and commercial law, particularly on corporate governance and takeover law, including "Comparative Corporate Governance: The State of the Art and International Regulation" and "Corporate Boards in Europe – Accountability and Convergence" published in *American Journal of Comparative Law*.



Masahisa Ikeda, Japan

Masahisa Ikeda is a partner of Shearman & Sterling LLP and the managing partner of the firm's Tokyo office. His practice covers general corporate matters, with a particular focus on mergers & acquisitions, capital markets, and corporate governance. He has extensive experience representing companies and financial advisers in both public and private mergers and acquisitions, and has also provided corporate governance-related advice to numerous industrial and financial clients in Japan, including many of the largest electronics manufacturers, pharmaceutical companies, and high-technology companies. Mr. Ikeda represents numerous Japanese corporations on government investigations, including investigations relating to antitrust law matters and FCPA. He was named a leading practitioner for capital markets, mergers and acquisitions, and asset management by *Chambers Global*, *Chambers Asia*, *Asia Pacific Legal 500*, *IFLR 1000* and the *Nihon Keizai Shimbun*. Mr. Ikeda holds both an A.B. and a J.D. from Harvard University, USA, and an additional law degree from the University of Tokyo, Japan.



Jack B. Jacobs, USA

Jack B. Jacobs recently joined Sidley Austin, LLP, as senior counsel, where he advises companies and boards of directors on Delaware law issues, including fiduciary duties, mergers and acquisition, and corporate governance. He had previously served as a Justice of the Delaware Supreme Court from 2003 until 2014. Prior to this appointment, he was vice chancellor of the Delaware Court of Chancery after practicing law in Wilmington, Delaware since 1968. Mr. Jacobs is a member of the American Law Institute and of the Delaware and American Bar Associations, and has participated in academic symposia programs related to corporate and securities law at various law schools and continuing

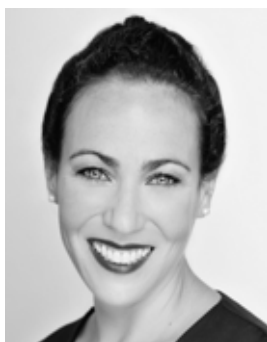


legal education programs. He has served as distinguished jurist lecturer at the University of Pennsylvania Law School, Regent's Lecturer in Residence at the University of California Los Angeles School of Law, Morrison & Foerster Lecturer at Stanford Law School, distinguished visiting jurist at the Harvard Law School Corporate Governance Program, and William J. Brennan Lecturer at NYU School of Law. Besides authoring numerous law review articles addressing facets of corporation law, mergers and acquisitions, and corporate governance, Mr. Jacobs was a guest speaker at corporate law conferences throughout the world, including Japan, Korea, Australia, the Netherlands, Sweden, Israel, the United Kingdom, and Singapore. Mr. Jacobs holds a B.A. from the University of Chicago and LL.B. from Harvard Law School, USA.



Cynthia B. Kane, USA

Cynthia B. Kane serves as special assistant to the Delaware Secretary of State Jeffrey W. Bullock, under Delaware Governor Jack A. Markell. Her current duties include marketing for the Division of Corporations at the Delaware Department of State. She served as coordinator of the international marketing committee and has organized Delaware trade missions and incorporation seminars in Germany, England, Holland, Japan, Chile, Argentina, Ireland, Israel, Taiwan, Turkey, Vietnam, Brazil, and India. Prior to joining the Department of State, Ms. Kane was the special projects coordinator at the Delaware Economic Development Office. She served as executive director of Delaware's Gubernatorial Inauguration in 1992-1993. She has been in association with and worked in various positions with former governor Thomas R. Carper and former Secretary of State Edward J. Freel since 1983 and also served in the Minner – Carney administration with Secretary of State Harriet Smith Windsor. Currently, Ms. Kane serves on the International Women's Forum, as well as the board of advisors to the Institute of Law & Economics at the University of Pennsylvania. In addition, she serves on many cultural and non-profit boards of directors both nationally and within the State of Delaware. Ms. Kane holds a B.A. from Boston University and has done graduate work at George Washington University, USA.



Jodie A. Kirshner, USA

Jodie A. Kirshner is a senior fellow at the Kresge Foundation and a visiting scholar and lecturer at Columbia Law School, USA. She is also an independent consultant to financial funds investing in Europe and, most recently, a technical advisor to the Bank for International Settlements, working on projects related to India. Until 2014, Ms. Kirshner was on the corporate law faculty at Cambridge University, where she also served as the deputy director of the Cambridge L.L.M. program, the deputy director of the Cambridge Centre for Corporate and Commercial Law, and as a fellow of Peterhouse College, Cambridge. Her book *International Corporate Bankruptcy Law: A Dynamic Comparative Approach* is forthcoming in 2015, and another book on *The Future of Detroit: Lessons After Bankruptcy for American Cities Struggling in a Globalized World*, is under preparation. Ms. Kirshner is a fellow of the Center for Law and Economics at Columbia Law School, the Cambridge Centre for Business Research, and the Center for Law, Economics, and Finance at George Washington University Law School, as well as a term member of the Council on Foreign Relations. Earlier, she completed fellowships at the Oxford Centre for Socio-Legal Studies and the Cambridge Centre for Business Research as a Fulbright Scholar, the London Business School Centre for Corporate Governance, and the Max Planck

Institute for Comparative and International Private Law in Hamburg, Germany. Ms. Kirshner holds an undergraduate degree from Harvard University in environmental science and public policy, and graduate degrees from Columbia University in both journalism and law.

Robert B. Knauss, USA

Robert B. Knauss is managing director and general counsel at Warburg Pincus since 2013. He is based in New York and oversees the firm's legal and regulatory matters. He also serves as a member of the executive management group. Prior to joining Warburg Pincus, Mr. Knauss was a corporate partner at the firm of Munger, Tolles & Olson LLP in Los Angeles, where he focused primarily on mergers and acquisitions, corporate finance and securities, and private equity. Prior to joining Munger, Tolles & Olson in 1981, he served as a law clerk for Justice William H. Rehnquist of the Supreme Court of the United States and the Honorable Walter R. Mansfield of the United States Court of Appeals for the Second Circuit. Mr. Knauss is a graduate of Harvard University and the University of Michigan Law School, USA.



Alexa C. Lam, China

Alexa C. Lam is a professor of legal practice with the Faculty of Law at the University of Hong Kong, China, since May 2015. Prior to her current position, Ms. Lam served as deputy chief executive officer of the Hong Kong Securities and Futures Commission (SFC) and executive director of investment products, both internationally and in China. She was the architect of the landmark Mutual Recognition of Funds act between Hong Kong and Mainland China, and led initiatives for the development of Hong Kong's offshore RMB business and capital market linkage with Mainland China. Ms. Lam also played a leading role in international regulatory initiatives. Together with the director of banking supervision and regulation of the US Federal Reserve Board, she co-chaired the working group on margining requirements (WGMR) of the Basel Committee on Banking Supervision and the International Organization of Securities Commissions to establish global standards for margin requirements on non-centrally cleared derivatives, a part of the G20 global reform program. The WGMR published the Margin Requirements for Non-centrally Cleared Derivatives report in September 2013.



Simon M. Lorne, USA

Simon M. Lorne is the vice chairman and chief legal officer of Millennium Management LLC, a hedge fund manager responsible for over \$11 billion in assets under management, with offices throughout the world. Prior to joining Millennium Management, he was a partner in the Los Angeles based law firm of Munger, Tolles & Olson LLP, the global head of internal audit at Salomon Brothers and the global head of compliance at Citigroup. He also serves on the board of directors and audit committee of Teledyne Technologies, Inc. Mr. Lorne has served in a wide variety of public sector, academic and private sector positions during the course of his career. He served as general counsel of the United States Securities and Exchange Commission. He is currently the co-director of Stanford Law School's Directors' College and is an adjunct professor at the New York University Law School and the NYU Stern School of Business. Mr. Lorne has authored two books, three



practitioner-oriented monographs and a number of articles in law reviews, magazines, and other publications. He is a frequent speaker at academic and industry symposia dealing with issues in the areas of securities regulation, securities law more broadly, and internal controls. Mr. Lorne holds an A.B. from Occidental College and a J.D. from the University of Michigan Law School, USA.



Christina A. Maguire, USA

Christina A. Maguire is vice president of proxy voting and governance research at BNY Mellon. In this role, she oversees the policy, voting and operations functions for over \$1.7 trillion in assets at over twelve thousand issuers on behalf of the firm's clients. Previously, Ms. Maguire served as director II at Fidelity Investments Investment Proxy Research for 15 years. Between governance positions, she was engaged in capital gifts advancement for individuals and corporations at both Harvard College and her alma mater the University of Massachusetts Amherst, USA, from where she holds a B.A. in communications.



Victoria B. Mars, USA

Victoria B. Mars is a chairman of the board of Mars, Inc. She is a fourth generation member of the Mars family whose great-grandfather, Frank C. Mars, founded the company in 1911. She has been a member of the Mars board of directors since 2006, currently serves on the board's remuneration committee and is a member of the benefit funding & investment oversight committee. For 35 years, Ms. Mars held various roles throughout the company, beginning in 1978 in Haguenau, France, where she first served as assistant brand manager for MILKY WAY® and later as export manager. She later joined Mars Electronics International, which at the time was the leading global manufacturer of unattended payment systems, as director of the Marine Systems Division. Afterwards, she transferred to Dove, International, as vice president of S&F, Commercial, and People and Organization in Burr Ridge, Illinois, USA. In 1997, Ms. Mars became company's first Ombudsman. She is currently a member of the boards of Foxcroft School in Middleburg, USA, and the Center for Large Landscape Conservation, USA. Ms. Mars holds a B.A. in administrative sciences and German and French languages from Yale University and an M.B.A. in finance from the Wharton School of Business, USA. Ms. Mars is a member of the board of Salzburg Global Seminar.



J. Kevin McCarthy, USA

J. Kevin McCarthy is a senior executive vice president and general counsel of Bank of New York Mellon (BNY Mellon), where he heads the bank's legal department and has overall responsibility for government affairs, the corporate secretary function, and global corporate security. He is also a member of the bank's executive committee, its most senior management body, which oversees day-to-day operations. Mr. McCarthy joined BNY Mellon as deputy general counsel in 2010 and led the litigation, enforcement and employment law functions. Later, he was appointed senior deputy general counsel and assumed additional responsibility for the legal team supporting the company's asset servicing business and corporate centre functions. Prior to joining BNY Mellon, Mr. McCarthy served as general

counsel at Cowen Group, Inc., a diversified investment bank and financial services firm. Prior to that, he was a partner at Wilmer Hale, focused on securities and litigation matters. Before that, Mr. McCarthy was at Credit Suisse First Boston in a variety of roles, most recently as managing director and global head of litigation. He began his legal career as an associate at Willkie Farr & Gallagher. Mr. McCarthy holds a B.A. from Siena College and a J.D. from Albany Law School of Union University, USA.

Christian Mikosch, Austria

Christian Mikosch is a partner at Wolf Theiss, specializing in corporate law, international commercial law, and mergers & acquisitions. He is the responsible partner for the firm's work in China and Kosovo, and has particular interest and expertise in the Central and Eastern Europe (CEE/SEE region), where he was involved in establishing firm's presence. He advised numerous clients in setting up their company group structures in CEE/SEE and Austria and has experience in compliance and corporate governance in the banking sector. Mr. Mikosch is a lecturer of corporate law at the University of Vienna as well as at the Donauuniversität Krems, where he teaches contract law in CEE/SEE. Prior to joining Wolf Theiss, he gained valuable experience working in New York, USA. Mr. Mikosch holds LL.M. degrees from both the University of Manchester, UK, and the University of Rotterdam, the Netherlands.



Steve Monnier, Australia

Steve Monnier is director at BlackRock's EMEA Corporate Governance and Responsible Investment team based in London, UK. In this role, he is responsible for engagement and voting across the Nordic region, Germany, Austria, Switzerland as well as some UK sectors. Prior to the current post, Mr. Monnier served as director of BlackRock's corporate and operational risk department. Prior to joining BlackRock, Mr. Monnier worked at BNY Mellon, where he held a number of corporate and operational risk positions. Previously, Mr. Monnier spent 3 years at Unisys as an operational risk manager after working as a deal manager at Macquarie Bank in the Project and Structured Finance Group for 3 years. He started his career in 1994 as an analyst for Banker Trust. Mr. Monnier holds a B.Bus. degree from Griffith University, Australia, and an M.Sc. in business strategy and the environment from Birkbeck College, University of London, UK. He is also a Certified Practising Accountant from the Australian Society of Certified Practising Accountants.



Robert H. Mundheim, USA

Robert H. Mundheim is of counsel to Shearman & Sterling LLP and Professor of Corporate Law & Finance at the University of Arizona Law School. He has been university professor of law & finance at the University of Pennsylvania Law School and dean of the Law School (1982-89). Mr. Mundheim is a former general counsel of the US Treasury (1977-80) and former general counsel of Salomon, Inc. (1992-98). He has served on the board of directors of a number of publicly held companies including Gogo, Quadra Realty Trust (chair), Benjamin Moore, Commerce Clearing House, eCollege, Hypo Real Estate, and First Pennsylvania Bank. Mr. Mundheim is a founding trustee of the American College of Governance Counsel. He also serves as vice chair of the Curtis Institute of Music, and



as a trustee of New School University. He served as a member of the ABA Task Force on Corporate Responsibility and has been a faculty member of the Vanderbilt Directors' College, the Duke Directors' Education Institute and the Stanford Directors' College. He received both a bachelor's degree and a law degree from Harvard University, USA. He has been a Fellow of Salzburg Global Seminar since 1958 and additionally served as a faculty member in Salzburg on three sessions of American Law and Legal Institutions. Mr. Mundheim is a member of the board of Salzburg Global Seminar.



Victor T. Nilsson, Sweden

Victor T. Nilsson recently joined Shearman & Sterling as an associate in the New York Corporate Group. Prior to joining the firm, Mr. Nilsson served as a law clerk to two appellate judges in Arizona, USA. His interest and experience in corporate governance matters stem primarily from completing coursework in the field under Robert Mundheim's instruction and subsequently assisting Mr. Mundheim in developing related course materials for future students. In addition, Mr. Nilsson has served on the board of directors of the Swedish-American Chamber of Commerce in Arizona. He holds a B.A. from the University of Washington in Seattle, USA and a J.D. from the University of Arizona College of Law in Tucson, USA. During law school, Mr. Nilsson served as managing editor of the *Arizona Law Review* and focused his studies on corporate governance, securities and bank regulation, mergers and acquisitions, and other business law topics.



Melissa Obegi, USA

Melissa Obegi is Asia general counsel for Bain Capital, based in Hong Kong, China. Her work covers transactional, portfolio, and operational legal matters and risk management for Bain Capital's private equity operations and investments in the Asia Pacific region. Prior to joining Bain Capital in 2012, Ms. Obegi was the managing director with Oaktree Capital's Asia Principal Opportunities group and also served as Asia regional counsel for Oaktree in Hong Kong. She started with Oaktree Capital as associate general counsel at its Los Angeles headquarters in 2002. Prior to that, she held various positions with the Overseas Private Investment Corporation, a U.S. government agency that supports investment in global emerging markets with private equity investment funds, project finance, and political risk insurance. Ms. Obegi began her career with Coudert Brothers in New York as an associate in the International Banking group. She holds a B.Sc. in foreign service from the Foreign Service School at Georgetown University, USA, and a J.D. from the School of Law at the University of California, Los Angeles, USA.



Matthew J. O'Toole, USA

Matthew J. O'Toole is the chair of Potter Anderson's Business Group, and a member of the firm's executive committee. He concentrates his practice on corporate and business transactions, particularly the structure and use of Delaware business entities, including corporations, limited liability companies, partnerships (general and limited) and statutory trusts. He often serves as counsel to lenders, borrowers, investors, managers, trustees, and other parties involved in both domestic and international business transactions. His practice frequently involves providing third-party legal opinions concerning Delaware's

General Corporation Law, Delaware’s alternative entity statutes, the Delaware Uniform Commercial Code, and other applicable law. Mr. O’Toole currently serves as the chair of the Council of the Corporation Law Section of the Delaware State Bar Association and also sits on the drafting committee responsible for the Delaware Limited Liability Company Act, the Delaware Revised Uniform Limited Partnership Act and the Delaware Revised Partnership Act. Mr. O’Toole is co-author of “Symonds & O’Toole on Delaware Limited Liability Companies.” He holds both a B.A. and an M.A. from Fordham University and a J.D. from the College of William and Mary, USA.

Sandeep Parekh, India

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Salzburg Global Seminar

Salzburg Global Seminar was founded in 1947 by Austrian and American students from Harvard University. Convinced that former enemies must talk and learn from each other in order to create more stable and secure societies, they set out to create a neutral international forum for those seeking to regenerate Europe and shape a better world. Guided by this vision, we have brought together over 33,000 participants from 160 countries for more than 500 sessions and student academies across cultural and ideological barriers to address common challenges. Our track record is unique – connecting young and established leaders, and supporting regions, institutions and sectors in transition.

Salzburg Global's program strategy is driven by our Mission to challenge present and future leaders to solve issues of global concern. We work with partners to help people, organizations and governments bridge divides and forge paths for peace, empowerment and equitable growth. Our three Program Clusters – **Imagination**, **Sustainability** and **Justice** – are guided by our commitment to tackle systems challenges critical for next generation leaders and engage new voices to “re-imagine the possible.” We believe that advances in education, science, culture, business, law and policy must be pursued together to reshape the landscape for lasting results. Our strategic convening is designed to address gaps and faultlines in global dialogue and policy making and to translate knowledge into action.

Our programs target new issues ripe for engagement and “wicked” problems where progress has stalled. Building on our deep experience and international reputation, we provide a platform where participants can analyze blockages, identify shared goals, test ideas, and create new strategies. Our recruitment targets key stakeholders, innovators and young leaders on their way to influence and ensures dynamic perspectives on a given topic.

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