



HARVARD LAW SCHOOL
Program on Institutional Investors
Report of Activities, July 1, 2013 – June 30, 2014

The Program on Institutional Investors at Harvard Law School (PII), established in the summer of 2011, seeks to contribute to research, policy-making, discourse, and education with respect to institutional investors and issues of interest to institutional investors. During 2013-14, the PII's Director was Lucian Bebchuk, Stephen Davis and Scott Hirst served as Associate Directors, and Emily Lewis served as Administrative Director.

As the report documents, during the 2013-14 university year, the Program made the following contributions to research, education, and discourse in the field of corporate governance:

- **Harvard Law School Institutional Investor Forum:** The Program operates The Harvard Law School Institutional Investor Forum (HIIF), which aims at contributing to discourse, policy making and education with respect to institutional investors and issues of interest to them. It has over 20 institutional investor members and an advisory council of leading governance offers from the institutional investor community (See Section A);
- **Conferences:** The Program supported and facilitated two major conferences, the Harvard Roundtable on Activist Interventions in March 2014 and the Harvard Roundtable on Long-Term Value Creation in May 2014, each with more than 60 prominent participants, including investors, issuers, advisors, regulators, and academics (See Section A);
- **Research:** The Program supported and fostered cutting-edge research on corporate governance, including 16 studies by faculty members and senior fellows associated with the Program (see Section B);
- **Shareholder Rights Project:** The Program operated the Shareholder Rights Project (SRP), a clinical program that has provided services on a pro bono basis to public pension funds and nonprofit charitable organizations seeking to improve corporate governance, and has provided students with the opportunity to obtain hands-on experience with shareholder rights work (see Section C); and
- **Online forum and Newsletter:** Along with the Program on Corporate Governance, the Program operated *The Harvard Law School Forum on Corporate Governance and Financial Regulation*, which has 90 academic contributors and 168 practitioner contributors, and which featured about 600 posts in 2013-14, bringing the total number of posts to over 3,500 since its inception (see Section D).

In the upcoming year, except as noted below, the Program plans to continue activities similar in nature and scale to those summarized above and described in more detail in the body of the Report.

Additional information regarding the Program is available on the Program's website, <http://pii.law.harvard.edu/>.

A. Harvard Institutional Investor Forum

The Harvard Law School Institutional Investor Forum (HIIF), operated by the Harvard Law School Program on Institutional Investors and the Harvard Law School Program on Corporate Governance, aims at contributing to discourse, policy making and education with respect to institutional investors and issues of interest to them. The Forum is supported by its 23 institutional investor members, which include public pension funds, mutual funds and other investing institutions in the US and other jurisdictions. An advisory council consisting of leading governance officers from the institutional investor community provides the Forum with input on events and topics that could add value to the community of investors.

1. Members

During 2013-14, the HIIF's member institutions were as follows:

AFL-CIO	Florida State Board of Administration
Blackrock	Generation Investment Management
California Public Employees' Retirement System	Halcyon
California State Teachers' Retirement System	JANA Partners
Canada Pension Plan Investment Board	JPMorgan Asset Management
Cevian Capital	MFS Investment Management
Colorado Public Employees' Retirement Association	Norges Bank Investment Management
CtW Investment Group	North Carolina Department of State
Dimensional Fund Advisors	Ontario Teachers' Pension Plan
Fidelity	State Street
	UAW Retirement Medical Benefits Trust
	Universities Superannuation Scheme
	Vanguard

2. Advisory Council

During 2013-14, the HIIF's advisory council was as follows:

Glenn Booraem	<i>Vanguard</i>
Jay Chaudhuri	<i>North Carolina Department of State</i>
Eileen Cohen	<i>JPMorgan Asset Management</i>
Michelle Edkins	<i>Blackrock</i>
Matthew Filosa	<i>MFS Investment Management</i>
Scott Goebel	<i>Fidelity</i>
Gavin Grant	<i>Norges Bank Investment Management</i>
Peter S. Knight	<i>Generation Investment Management</i>
Rakhi Kumar	<i>State Street</i>
Stephanie Leaist	<i>Canada Pension Plan Investment Board</i>
Michael McCauley	<i>Florida State Board of Administration</i>
Meredith Miller	<i>UAW Retirement Medical Benefits Trust</i>
Manish Mital	<i>Halcyon</i>
Daniel Ong	<i>Dimensional Fund Advisors</i>
Charles Penner	<i>JANA Partners</i>
Brandon Rees	<i>AFL-CIO</i>
Paul Schneider	<i>Ontario Teachers' Pension Plan</i>
Anne Sheehan	<i>California State Teachers' Retirement System</i>
Anne Simpson	<i>California Public Employees' Retirement System</i>
Greg Smith	<i>Colorado Public Employees' Retirement Association</i>
Daniel Summerfield	<i>Universities Superannuation Scheme</i>
Dieter Waizenegger	<i>CtW Investment Group</i>
Harlan Zimmerman	<i>Cevian Capital</i>

3. Events

The HIIF holds events at the Harvard Law School campus and at the Harvard Club in New York City that bring together leading members of the institutional investor community and influential corporate executives, advisors, academics, and public officials. During 2013-14, the HIIF co-sponsored the Harvard Roundtable on Activist Interventions and the Harvard Roundtable on Long-Term Value Creation.

(a) Harvard Roundtable on Activist Interventions

Together with the Program on Corporate Governance, the Program co-sponsored the Harvard Roundtable on Activist Interventions, which took place on Wednesday, March 26, 2014 at the Harvard Club of New York City.

This event brought together prominent participants for a roundtable discussion with a wide range of perspective on the subject including activist and non-activist investors, issuers, advisors, regulators, and academics.

The Roundtable began with a discussion of the empirical study by Lucian Bebchuk, Alon Brav, and Wei Jiang, entitled “The Long-Term Effects of Hedge Fund Activism”, and the critiques of this study put forward by Wachtell, Lipton, Rosen & Katz; Lucian Bebchuk and Martin Lipton presented.

The Roundtable then moved to a general discussion of activist interventions, focusing on situations where activists have emerged and begun to engage with an issuer. Broader questions regarding the potential adverse consequences of activist interventions (and the fear of such interventions), as well as the benefits or costs of corporate governance arrangements that reduce the likelihood of such interventions, were part of the broader discussion that took place at the Harvard Roundtable on Long-Term Value Creation at Harvard Law School on May 21, 2014.

(b) Harvard Roundtable on Long-Term Value Creation

Together with the Program on Corporate Governance, the Program co-sponsored the Harvard Roundtable on Long-Term Value Creation, which took place on Wednesday, May 21, 2014 at Harvard Law School.

The Roundtable brought together prominent participants with a wide range of perspective on the subject, including investors, issuers, advisors, public officials, and academics. Given the prominence of Roundtable participants, most of the proceedings were devoted to a roundtable discussion of the subject amongst participants.

The first part of the Roundtable focused on short-termism and investor engagement with issuers. Participants discussed the opposing views regarding the extent to which investor engagement promotes short-termism and discourages long-term value creation, and considered some current issues within this broad debate, such as classified boards and annual elections, poison pills (including low-threshold poison pills), incentive schemes for nominees of activist investors, Section 13(d) reporting requirements, and other related topics that may be of interest to participants.

The second part of the Roundtable focused on short-termism and the internal organization of issuers and investors. The discussion considered the internal arrangements and compensation practices of institutional investors, arrangements for encouraging long-term shareholder loyalty, the internal arrangements of issuers, and other related.

B. Research

The Program seeks to foster research on institutional investors and issues related to them. Articles and working papers on such issues published or released during 2013-14 by faculty and fellows associated with the Program include the following:

Bebchuk, Lucian, Alon Brav, and Wei Jiang, "The Long-Term Effects of Hedge Fund Activism," 114 *Columbia Law Review* (forthcoming, 2014).

Bebchuk, Lucian, Alma Cohen, and Charles C.Y. Wang, "Golden Parachutes and the Wealth of Shareholders," 25 *Journal of Corporate Finance* 140-154 (2014).

Bebchuk, Lucian, Scott Hirst, and June Rhee, "Toward Board Declassification in 100 S&P 500 and Fortune 500 Companies: Report of the SRP for the 2012 and 2013 Proxy Seasons" (2014).

Brav, Alon, Lucian Bebchuk, Robert Jackson and Wei Jiang, "Pre-Disclosure Accumulations by Activist Investors: Evidence and Policy," *Journal of Corporation Law* 39 (forthcoming, 2013).

Brav, Alon, Wei Jiang, and Hyunseob Kim, "The Real Effects of Hedge Fund Activism: Productivity, Asset Allocation, and Industry Concentration," Working paper (2014).

Brav, Alon, Wei Jian, and Xuan Tian, "Shareholder Power and Corporate Innovation: Evidence from Hedge Fund Activism," Working paper (2014).

Coates, IV, John C., Jennifer Hill, and Randall Thomas, eds., Edward Elger, "Thirty Years of Evolution in the Roles of Institutional Investors in Corporate Governance," *Research Handbook on Shareholder Power* (forthcoming, 2014).

Cohen, Alma and Charles C.Y. Wang, "How Do Staggered Boards Affect Shareholder Value? Evidence from a Natural Experiment," (forthcoming, *Journal of Financial Economics* 2014).

Davis, Steven, "The Costs of Fiduciary Failure: and an Agenda for Remedy", in James P. Hawley, Andreas G.F. Hoepner, Keith L. Johnson, Joakim Sandberg and Edward J. Waitzer, eds., *Cambridge Handbook of Institutional Investment and Fiduciary Duty* (Cambridge: Cambridge University Press (2014)).

Ferrell, Allen, "Calculating Damages in ERISA Litigation", 1 *Journal of Financial Perspectives* 93 (2013).

Ferrell, Allen and Martijn Cremers, "Thirty Years of Shareholder Rights and Firm Valuation," 69 *Journal of Finance* 1167 (2014).

Fried, Jesse M. and Brian J. Broughman, "Carrots and Sticks: How VCs Induce Entrepreneurial Teams to Sell Startups," 98 *Cornell Law Review* 1319-1357 (2013).

Kastiel, Kobi, "Against All Odds: Shareholder Activism in Controlled Companies," Working Paper (2014).

Nili, Yaron, "Missing the Forest for the Trees: A New Approach to Shareholder Activism," 4 *Harvard Business Law Review* 157 (forthcoming, 2014).

Roe, Mark, "Corporate Short-termism - In the Boardroom and in the Courtroom," 68 *Business Lawyer* 977 (2013).

Strine, Jr., Leo E., "Can We Do Better By Ordinary Investors? A Pragmatic Reaction to the Dueling Ideological Mythologists of Corporate Law," 113 *Columbia Law Review* 449 (2014).

C. The Shareholder Rights Project

Since 2012, the PII has operated the Shareholder Rights Project (SRP), a clinical program that has provided services on a pro bono basis to public pension funds and nonprofit charitable organizations seeking to improve corporate governance. The SRP has also provided students with the opportunity to obtain hands-on experience with shareholder rights work. Students participating in the clinical program were also enrolled in the Shareholder Rights Clinical Seminar. Further information about the clinic and clinical seminar are available at: <http://www.law.harvard.edu/academics/curriculum/catalog/index.html?o=64841>.

In 2013-14, the Shareholder Rights Project represented and advised five institutional investors in connection with the submission of shareholder proposals: The Illinois State Board of Investment, the Nathan Cummings Foundation, the North Carolina Department of State Treasurer, the Ohio Public Employees Retirement System, and the Florida State Board of Administration.

The SRP's 2013-14 advisory board included Richard Breeden, Jesse Fried, Jeffrey Gordon, Reinier Kraakman, and Peter Mixon. During 2013-14, the SRP's director was Lucian Bebchuk, Scott Hirst served as Associate Director, Emily Lewis served as Administrative Director, and June Rhee served as Counsel.

The SRP will not be offering a clinical program or seminar in 2014-15.

D. The Harvard Law School Forum on Corporate Governance and Financial Regulation

Together with the Program on Corporate Governance, the Program co-sponsors the widely-followed blog website entitled *The Harvard Law School Forum on Corporate Governance and Financial Regulation*. The Forum can be accessed at: <http://blogs.law.harvard.edu/corpgov/>.

During 2013-14, the Forum featured an average of 52 articles per month. The Forum features communications about corporate governance research and practice both by individuals associated with the Program as well as posts by guest contributors. The forum provides updates on working papers, seminars, speakers, and other activities sponsored by the Program. There are currently 90 academic contributors and 168 practitioner contributors. The full list of contributors is available at <http://www.blogs.law.harvard.edu/corpgov/>.