

HARVARD LAW SCHOOL  
Program on Institutional Investors  
Report of Activities, July 1, 2015 – June 30, 2016

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 2015-16, the PII's director was Lucian Bebchuk, the associate directors were Stephen Davis and Scott Hirst, and the administrative directors were Emily Lewis and Kat Linnehan.

As the report documents, during the 2015-16 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 19 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 three major conferences, the Harvard Roundtable on Executive Compensation in October 2015, the Harvard Roundtable on Corporate Governance in March 2016, and the Harvard Roundtable on Shareholder Engagement in June 2016, with an average of 79 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 12 studies by faculty members and senior fellows associated with the Program (see Section B); 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 featured 644 posts in 2015-16, bringing the total number of posts to over 4,749 since its inception (see Section C).

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 19 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 2015-16, the HIIF's member institutions were as follows:

<i>BlackRock</i>	<i>JPMorgan Asset Management</i>
<i>Caisse de dépôt et placement du Québec</i>	<i>MFS Investment Management</i>
<i>California Public Employees' Retirement System</i>	<i>Norges Bank Investment Management</i>
<i>California State Teachers' Retirement System</i>	<i>North Carolina Department of State</i>
<i>Canada Pension Plan Investment Board</i>	<i>Ontario Teachers' Pension Plan</i>
<i>Charles Schwab Investment Management</i>	<i>State Board of Administration of Florida</i>
<i>Colorado Public Employees' Retirement Association</i>	<i>State Street</i>
<i>Dimensional Fund Advisors</i>	<i>TIAA</i>
<i>Fidelity</i>	<i>USS Investment Management</i>
	<i>Vanguard</i>

### **2. Advisory Council**

During 2015-16, the HIIF's advisory council was as follows:

<i>Glenn Booraem</i>	<i>Vanguard</i>
<i>Marc Bryant</i>	<i>Fidelity</i>
<i>Eileen Cohen</i>	<i>JPMorgan Asset Management</i>
<i>Michelle Edkins</i>	<i>BlackRock</i>
<i>Matthew Filosa</i>	<i>MFS Investment Management</i>
<i>Benoit Gauvin</i>	<i>Caisse de Dépôt et Placement du Québec</i>
<i>Gavin Grant</i>	<i>Norges Bank Investment Management</i>

Bess Joffe	<i>TIAA</i>
Stephanie Leaist	<i>Canada Pension Plan Investment Board</i>
Gwen Le Berre	<i>Charles Schwab Investment Management</i>
Michael McCauley	<i>Florida State Board of Administration</i>
Manish Mital	<i>Halcyon</i>
Daniel Ong	<i>Dimensional Fund Advisors</i>
Charles Penner	<i>JANA Partners</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>USS Investment Management</i>
Melissa Waller	<i>North Carolina Department of State</i>

### **3. Events**

The HIIF holds events that bring together leading members of the institutional investor community and influential corporate executives, advisors, academics, and public officials. During 2015-16, the HIIF co-sponsored the Harvard Roundtable on Executive Compensation, the Harvard Roundtable on Corporate Governance and the Harvard Roundtable on Shareholder Engagement.

#### **(a) Harvard Roundtable on Executive Compensation**

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Executive Compensation, which took place on Wednesday, October 21, 2015 at Harvard Law School.

The event brought together for a roundtable discussion prominent experts with a wide range of perspectives on the subject, including senior officers from leading institutional investors (both mutual funds and public pension funds) with aggregate assets under management exceeding \$13 trillion, and from significant issuers, prominent advisors, and academics. The Roundtable sessions focused on issues relating to the process of determining executive compensation included discussion of the work of proxy advisors and their interaction with investors and issuers, engagement between issuers and investors themselves and compensation disclosure issues, such as pay-for-performance disclosure and pay-ratio disclosure. The Roundtable then moved to a discussion of the substantive terms of compensation arrangements, including compensation levels, composition, and structures. Issues that were considered included the composition of long-term and short-term incentive pay and contractual provisions such as claw-backs and hedging policies.

The Roundtable ended with a discussion of current issues in corporate governance, including lessons from the 2015 proxy season, current thinking on engagement with investors, and proxy access.

### **(b) Harvard Roundtable on Corporate Governance**

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable Corporate Governance, which took place on Wednesday, March 16, 2016 at Harvard Law School.

The event brought together for a roundtable discussion 79 prominent experts with a wide range of perspectives on this subject, including those of investors, issuers, advisors, academics, and public officials. The Roundtable sessions focused on current issues in corporate governance, including those likely to arise in the upcoming proxy season. The Roundtable began with a discussion of board election arrangements, including issues of proxy access and universal ballots. The discussion then moved on to consider shareholder rights to participate in corporate decision-making. Topics discussed ranged from poison pills, rights to call a special meeting, and rights to submit shareholder proposals. The Roundtable then discussed issues related to board composition and leadership, board diversity and refreshment, and the separation of chairman and CEO. Finally, participants considered issues related to political spending and social responsibility resolutions.

### **(c) Harvard Roundtable on Shareholder Engagement**

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Shareholder Engagement, which took place on Wednesday, June 9, 2016 at Harvard Law School.

The Roundtable focused on shareholder engagement with issuers, including engagements by activist and institutional investors. The Roundtable began with a session in which Leo E. Strine, Jr., Chief Justice of the Delaware Supreme Court, engaged with participants and responded to questions and comments. The Roundtable then moved to a discussion of current debates on shareholder activism, including debates on short-termism and on buybacks and distributions to shareholders. Next, the Roundtable proceeded to a discussion of engagements, including engagements between issuers and investors (both activists and non-activists); engagements among investors; and outcomes and settlements of engagements. The Roundtable ended with a discussion of legal arrangements and proposed reforms.

## 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 2015-16 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," 115 *Columbia Law Review* 1085-1156 (2015).

Coates, IV, John C., "Securities Litigation In The Roberts Court: An Early Assessment," 57 *Arizona Law Review* 1 (2015); reprinted in *Corporate Practice Commentator* (2016).

Coates, IV, John C., "Thirty Years of Evolution in the Roles of Institutional Investors in Corporate Governance," *Research Handbook on Shareholder Power* (Jennifer Hill and Randall Thomas, eds.) (Edward Elgar Publishing) (2015).

Cohen, Alma and Charles C. Y. Wang, "Staggered Boards and Shareholder Value: A Reply to Amihud and Stoyanov," (2015).

Davis, Stephen, Jon Lukomnik and David Pitt-Watson, *What They Do With Your Money: How The Financial System Fails Us and How to Fix It* (Yale University Press) (2016).

Davis, Stephen, Jon Lukomnik and David Pitt-Watson, "The Return of Ownership," *NACD Directorship* (2016).

Naughton, James and Holger Spamann, "Fixing Public Sector Finances: The Accounting and Reporting Lever," 62 *UCLA Law Review* 572 (2015).

Nili, Yaron, "Servants of Two Masters? The Feigned Hysteria over Activist-Paid Directors," 18 *Journal of Business Law* (2016).

Schanzenbach, Max and Robert H. Sitkoff, "Fiduciary Financial Advice to Retirement Savers: Don't Overlook the Prudent Investor Rule," Harvard John M. Oline Center for Law, Economics, and Business, Discussion Paper No. 867 (2016).

Schanzenbach, Max and Robert H. Sitkoff, "Fiduciary Financial Advisers and the Incoherence of a 'High-Quality Low-Fee' Safe Harbor," Northwestern Law & Econ Research Paper No. 15-18 (2015).

Schanzenbach, Max and Robert H. Sitkoff, "The Prudent Investor Rule and Market Risk: An Empirical Analysis," *Journal of Empirical Legal Studies* (forthcoming); Harvard Public Law Working Paper No. 15-06; Northwestern Public Law Research Paper No. 15-16.

Strine, Jr., Leo E., “Securing Our Nation’s Economic Future: A Sensible, Nonpartisan Agenda to Increase Long-Term Investment and Job Creation in The United States,” *The Business Lawyer* (forthcoming 2016).

### **C. 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://corpgov.law.harvard.edu/>. From its inception to June 30, 2016, the Forum has featured a total of 4,749 posts, trending upwards, currently running at an average rate of 52 posts per month. The Forum features communications about corporate governance research and practice both by individuals associated with the Program – faculty, fellows, and members of the Program’s advisory board – as well as posts by guest contributors. The Forum provides updates on working papers, seminars, speakers, and other activities sponsored by the Program.

Further information about the Forum is available in the annual report of the Program on Corporate Governance.