

HARVARD LAW SCHOOL
Program on Institutional Investors
Report of Activities, July 1, 2016 – June 30, 2017

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 2016-17, the PII's director was Lucian Bebchuk, the associate directors were Stephen M. Davis and Scott Hirst, and the administrative director was Kat Linnehan.

As the report documents, during the 2016-17 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 22 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 Corporate Governance in November 2016, the Harvard Roundtable on Corporate Governance in March 2017, and the Harvard Roundtable on Shareholder Engagement in June 2017, with an average of 80 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 26 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 869 posts in 2016-17, bringing the total number of posts to over 5,618 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 22 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 2016-17, the HIIF's member institutions were as follows:

BlackRock

Caisse de dépôt et placement du Québec

California Public Employees' Retirement System

California State Teachers' Retirement System

Canada Pension Plan Investment Board

Charles Schwab Investment Management

Colorado Public Employees' Retirement Association

Dimensional Fund Advisors

Fidelity Investments

Franklin Templeton

Goldman Sachs Asset Management

JANA Partners

JPMorgan Asset Management

MFS Investment Management

Norges Bank Investment Management

Northern Trust Asset Management

Nuveen (part of TIAA)

Ontario Teachers' Pension Plan

State Board of Administration of Florida

USS Investment Management

Vanguard Group

Wellington Management

2. Advisory Council

During 2016-17, the HIIF's advisory council was as follows:

Jeffrey Barbieri

Jean-Frédéric Bérard

Glenn Booraem

Eileen Cohen

Christian Correa

Michelle Edkins

Matthew Filosa

Scott Goebel

Gavin Grant

Wellington Management

Caisse de Dépôt et Placement du Québec

Vanguard Group

JPMorgan Asset Management

Franklin Templeton

BlackRock

MFS Investment Management

Fidelity Investments

Norges Bank Investment Management

Bess Joffe	<i>Nuveen (part of TIAA)</i>
Stephanie Leaist	<i>Canada Pension Plan Investment Board</i>
Gwen Le Berre	<i>Charles Schwab Investment Management</i>
Michael McCauley	<i>State Board of Administration of Florida</i>
Maggie Moore	<i>Goldman Sachs Asset Management</i>
Charles Penner	<i>JANA Partners</i>
Joel Schneider	<i>Dimensional Fund Advisors</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>
Jacob C. Weaver	<i>Northern Trust Asset Management</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 2016-17, the HIIF co-sponsored two Harvard Roundtables on Corporate Governance and the Harvard Roundtable on Shareholder Engagement. Each event brought together for a roundtable discussion prominent experts with a wide range of perspectives on corporate governance issues, including those of investors, issuers, advisors, academics and public officials.

(a) Harvard Roundtable on Corporate Governance, November 2016

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Corporate Governance, which took place on Wednesday, November 2, 2016 at Harvard Law School. The Roundtable sessions focused on issues relating to recent developments and current debates in corporate governance. The Roundtable began with a discussion with F. William McNabb III, the Chairman of the Board and Chief Executive Officer of Vanguard. The Roundtable then moved to discussions of the Commonsense Principles of Corporate Governance and the Business Roundtable Principles of Corporate Governance, the proposed regulation of proxy advisory firms, the 'Brokaw Act' proposal and poison pills and other takeover defenses. The Roundtable ended with discussions on universal ballots and rules relating to shareholder proposals.

(b) Harvard Roundtable on Corporate Governance, March 2017

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable Corporate Governance, which took place on Wednesday, March 15, 2017 at Harvard Law School. The Roundtable sessions focused on current issues in corporate governance, including those which were likely to arise in the following proxy season. The Roundtable began

with discussions of the impact of the new administration on corporate governance and proposals regarding the relationship between issuers and investors (including the Framework for U.S. Stewardship and Governance). The discussion then moved on to consider board composition, including diversity, refreshment and independence issues. The Roundtable then discussed issues related to the supply of shareholder proposals and the rise of social responsibility proposals.

(c) Harvard Roundtable on Shareholder Engagement, June 2017

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Shareholder Engagement, which took place on Thursday, June 15, 2017 at Harvard Law School. The Roundtable sessions focused on investor engagement with issuers as well as other current issues in corporate governance. The Roundtable began with a discussion of proposals to reform legislative and regulatory rules related to corporate governance and shareholder engagement. The Roundtable then moved to discussions of engagements between issuers and investors, both activists and non-activists, including settlements, short-termism, buybacks and distributions to shareholders and horizontal shareholding among institutional investors.

B. Research

The Program seeks to foster research on institutional investors and issues related to them. Books, articles and working papers on such issues published or released during 2016-17 by faculty and fellows associated with the Program include the following:

John Armour, Luca Enriques, Henry Hansmann and Reinier Kraakman, “The Basic Governance Structure: The Interests of Shareholders as a Class,” ECGI Working Paper Series in Law, Working Paper No. 337 (2017) (in *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd Ed.) (Oxford University Press) (2017).

Lucian A. Bebchuk and Kobi Kastiel, “The Untenable Case for Perpetual Dual-Class Stock,” 103 *Va. L. Rev.* 585 (2017).

Lucian A. Bebchuk and Assaf Hamdani, “Independent Directors and Controlling Shareholders,” 165 *U. Pa. L. Rev.* 1271 (2017).

Lucian A. Bebchuk and Assaf Hamdani, “Making Independent Directors Work,” *U. Pa. L. Rev.* (forthcoming 2017).

Lucian A. Bebchuk, Alma Cohen, and Scott Hirst, “The Agency Problems of Institutional Investors,” (June 1, 2017).

Lucian A. Bebchuk and Alma Cohen, “Recent Board Declassifications: A Response to Cremers and Sepe,” (May 1, 2017).

Lucian A. Bebchuk, "Dancing with Activists," Columbia Business School Research Paper No. 17-44 (April 10, 2017) (with Alon Brav, Wei Jiang, and Thomas Keusch).

John C. Coates, Ronald A. Fein, Kevin P. Crenny, and Li Wei Vivian Dong, "Quantifying Institutional Block Ownership, Domestic and Foreign, at Publicly Traded U.S. Corporations," Harvard Law School John M. Olin Center for Law, Economics & Business, Discussion Paper No. 888 (2016).

Alma Cohen and Charles C.Y. Wang, "Staggered Boards and Shareholder Value: A Reply to Amihud and Stoyanov," *Journal of Financial Economics* (forthcoming 2017).

Alma Cohen and Charles C.Y. Wang, "Reexamining Staggered Boards and Shareholder Value," Harvard Law school John M. Olin Center Discussion Paper No. 908 (June 13, 2017).

Stephen Davis, "Governments and Governance," *Hawkamah Journal* (No. 7) (2016).

Allen Ferrell, "New Special Study of the Securities Markets: Intermediaries," *Columbia University's New Special Study of the Securities Markets* (with John Morley) (forthcoming chapter in book).

Allen Ferrell, "Socially Responsible Firms," 122 *Journal of Financial Economics* 586-606 (2016) (with Hao Liang and Luc Renneboog).

Jesse M. Fried and Charles C.Y. Wang, "Short-Termism and Capital Flows," Harvard Business School Accounting & Management Unit Working Paper No. 342/2017 (2017).

Oliver Hart, "Incomplete Contracts and Control," *American Economic Review*, 107(7): 1731-52 (2017).

Mark J. Roe, "Financial Markets and the Political Center of Gravity," 2 *Journal of Law, Finance, and Accounting* 125 (2017) (with Travis Coan).

Robert H. Sitkoff, "Other Fiduciary Duties: Implementing Loyalty and Care," in *The Oxford Handbook of Fiduciary Law* (Evan J. Criddle, Paul B. Miller, and Robert H. Sitkoff, eds.) (Oxford University Press, under contract).

Robert H. Sitkoff, "The Prudent Investor Rule and Market Risk: An Empirical Analysis," 14 *Journal of Empirical Legal Studies* 129 (2017) (with Max Schanzenbach).

Robert H. Sitkoff, "Financial Advisers Can't Overlook the Prudent Investor Rule," *Journal of Financial Planning*, at 28 (2016) (with Max Schanzenbach).

Robert H. Sitkoff, "Revocable Trusts and Incapacity Planning: More than Just a Will Substitute," 24 *Elder Law Journal* 1 (2016) (with David Feder).

Leo E. Strine, Jr., “Corporate Power is Corporate Purpose I: Evidence from My Hometown,” *Oxford Rev. Econ. Pol’y* (forthcoming 2017).

Leo E. Strine, Jr., “Corporate Power is Corporate Purpose II: An Encouragement for Future Consideration from Professors Johnson and Millon,” *72 Wash. & Lee L. Rev.* 1165 (2017).

Leo E. Strine, Jr., “Who Bleeds When the Wolves Bite?: A Flesh and Blood Perspective On Hedge Fund Activism and Our Strange Corporate Governance System,” *126 Yale L.J.* 1870 (2017).

Leo E. Strine, Jr., “Corporate Power Ratchet: The Court’s Role in Eroding ‘We The People’s’ Ability to Constrain Our Corporate Creations,” *51 Harv. C.R.-C.L. L. Rev.* 423 (2016).

Leo E. Strine, Jr., “Securing Our Nation’s Economic Future: A Sensible, Nonpartisan Agenda to Increase Long-Term Investment and Job Creation in The United States,” *71 Bus. Law.* 1081 (2016).

Leo. E. Strine, Jr., “The Soviet Constitution Problem in Comparative Corporate Law: Testing the Proposition that European Corporate Law is More Stockholder-Focused Than U.S. Corporate Law,” *89 S. Cal. L. Rev.* 1239 (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, 2017, the Forum has featured a total of 5,618 posts, trending upwards, currently running at an average rate of 71 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.