

HARVARD LAW SCHOOL
Program on Institutional Investors
Report of Activities, July 1, 2017 – June 30, 2018

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 2017-18, the PII's director was Lucian Bebchuk; the associate directors were Stephen M. Davis, Scott Hirst, and Matthew Filosa; and the administrative director was Kat Linnehan.

As the report documents, during the 2017-18 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 23 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 October 2017, the Harvard Roundtable on Corporate Governance in March 2018, and the Harvard Roundtable on Shareholder Engagement in June 2018, each of the conference attracting a large number of prominent participants, including investors, issuers, advisors, regulators, judges, and academics (See Section A);
- **Research:** The Program supported and fostered cutting-edge research on institutional investors, corporate governance, and related issues, including 27 studies by faculty members and senior fellows associated with the Program (see Section B); and
- **Online Forum:** Along with the Program on Corporate Governance, the Program operated *The Harvard Law School Forum on Corporate Governance and Financial Regulation*, an online publication which featured 897 posts in 2017-18, bringing the total number of posts to over 6,500 since inception; the Forum has more than 15,000 social media followers and more than 5,000 subscribers to its daily newsletter (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 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 2017-18, the HIIF's member institutions were as follows:

<i>BlackRock</i>	<i>MFS Investment Management</i>
<i>Caisse de dépôt et placement du Québec</i>	<i>Norges Bank Investment Management</i>
<i>California Public Employees' Retirement System</i>	<i>Northern Trust Asset Management</i>
<i>California State Teachers' Retirement System</i>	<i>Nuveen</i>
<i>Charles Schwab Investment Management</i>	<i>Ontario Teachers' Pension Plan</i>
<i>Colorado Public Employees' Retirement Association</i>	<i>PGGM Investments</i>
<i>Dimensional Fund Advisors</i>	<i>State Board of Administration of Florida</i>
<i>Fidelity Investments</i>	<i>State Street Global Advisors</i>
<i>Franklin Templeton</i>	<i>USS Investment Management</i>
<i>Goldman Sachs Asset Management</i>	<i>Vanguard Group</i>
<i>JANA Partners</i>	<i>Wellington Management</i>
<i>JPMorgan Asset Management</i>	

2. Advisory Council

During 2017-18, the HIIF's advisory council was as follows:

<i>Lindsey Apple</i>	<i>MFS Investment Management</i>
<i>Jeffrey Barbieri</i>	<i>Wellington Management</i>
<i>Jean-Frédéric Bérard</i>	<i>Caisse de Dépôt et Placement du Québec</i>
<i>Glenn Booraem</i>	<i>Vanguard Group</i>
<i>Marc Bryant</i>	<i>Fidelity Investments</i>

Christian Correa	<i>Franklin Templeton</i>
Matthew DiGuiseppe	<i>State Street Global Advisors</i>
Michelle Edkins	<i>BlackRock</i>
Jonas Jølle	<i>Norges Bank Investment Management</i>
Nishesh Kumar	<i>J.P. Morgan Asset Management</i>
Gwen Le Berre	<i>Charles Schwab Investment Management</i>
Aeisha Mastagni	<i>California State Teachers' Retirement System</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>
Peter Reali	<i>Nuveen</i>
Luz Rodriguez	<i>Colorado Public Employees' Retirement Association</i>
Joel Schneider	<i>Dimensional Fund Advisors</i>
Paul Schneider	<i>Ontario Teachers' Pension Plan</i>
Anne Simpson	<i>California Public Employees' Retirement System</i>
Margriet Stavast-Groothuis	<i>PGGM Investments</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 2017-18, 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, October 2017

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Corporate Governance, which took place on Wednesday, October 25, 2017 at Harvard Law School. The event brought together for a roundtable discussion prominent experts with a wide range of perspectives on the subject, including those of investors, issuers, advisors, academics and public officials. The Roundtable focused on current issues in corporate governance. The Roundtable began with a discussion of the increasing interest of investors in social responsibility and environmental matters. The Roundtable proceeded to a discussion of current topics related to boards of directors (including composition, independence, accountability and diversity). The Roundtable then moved to a discussion of other recent developments and current debates in corporate governance. Additional issues discussed at the Roundtable included

departures from the principle of one-share/one-vote, including the index eligibility of multiple-class companies, and tenure voting; institutional investor stewardship and the rise of passive investing; recent trends in executive compensation; and mandatory arbitration and forum selection bylaws.

(b) Harvard Roundtable on Corporate Governance, March 2018

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable Corporate Governance, which took place on Thursday, March 15, 2018 at Harvard Law School. The event brought together for a roundtable discussion prominent experts with a wide range of perspectives on this subject, including those of investors, issuers, advisors, academics and public officials. The Roundtable focused on recent developments and current issues of relevance for the 2018 proxy season. Issues discussed included risk oversight and crisis management by boards of directors; trends in executive compensation and director pay; investor stewardship and issuer-investor communications; mandatory arbitration provisions; engagement on corporate social responsibility matters; board composition; and the continuing debate over dual-class stock.

(c) Harvard Roundtable on Shareholder Engagement, June 2018

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Shareholder Engagement, which took place on Wednesday, June 6, 2018 at Harvard Law School. The event brought together for a roundtable discussion prominent experts with a wide range of perspectives on this subject, including those of investors, issuers, advisors, academics and public officials. The Roundtable sessions began with presentations about, and a discussion of, the advantages and disadvantages of dual-class structures. The Roundtable then moved to consideration of proposals regarding the inclusion of companies with such structures in equity indices, including MSCI's ongoing consultation on the issue. Next, the Roundtable proceeded to a discussion of environmental, social, and governance (ESG) engagement. Other topics discussed included Larry Fink's 2018 Letter to CEOs, ESG shareholder proposals, and ESG metrics and disclosures. Finally, the Roundtable moved to a discussion of recent developments in investor activism, proxy contests and settlements, and activist and issuer strategies.

B. Research

The Program seeks to foster research on institutional investors, corporate governance, and related issues. Books, articles and working papers on such issues published, released or accepted for publication during 2017-18 by faculty and fellows associated with the Program include the following:

Michael S. Barr, Howell E. Jackson, and Margaret Tahyar, *Financial Regulation: Law and Policy* (2nd ed., Foundation Press) (2018).

Lucian A. Bebchuk, Alma Cohen and Scott Hirst, “The Agency Problems of Institutional Investors,” 31 *Journal of Economic Perspectives* 89 (Summer 2017).

Lucian A. Bebchuk and Kobi Kastiel, “The Perils of Small-Minority Controllers,” *Georgetown Law Journal* (forthcoming 2018).

John C. Coates, IV, Darius Palia and Ge Wu, “Reverse Termination Fees in M&A,” (2018).

Allen Ferrell, “New Special Study of the Securities Markets: Intermediaries,” with John Morley (paper for launch of Columbia University’s New Special Study of the Securities Markets).

Jesse M. Fried, “Are Buybacks Shortchanging Investment?” *Harvard Business Review* 88-95 (March-April 2018) (with C. Wang).

Jesse M. Fried, “Do Founders Control Start-Up Firms that Go Public?,” Working Paper (2018) (with B. Broughman).

Jesse M. Fried, “The Effect of Minority Veto Rights on Controller Tunneling,” Working Paper (2018) (with E. Kamar and Y. Yafeh).

Jesse M. Fried and Holger Spamann, “Cheap-Stock Tunneling Around Preemptive Rights,” (June 1, 2018). European Corporate Governance Institute (ECGI) – Law Working Paper No. 408/2018.

Henry Hansmann, Reinier Kraakman, and Richard Squire, *Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce*, in Giuseppe Dari-Mattiacci and Dennis P. Kehoe (eds.), *Roman Law and Economics* (Oxford University Press) (Forthcoming, 2018).

Oliver Hart and Luigi Zingales, “Companies Should Maximize Shareholder Welfare Not Market Value,” 2 *Journal of Law, Finance, and Accounting* 247 (2017).

Oliver Hart and Luigi Zingales, “Serving Shareholders Doesn’t Mean Putting Profit Above All Else,” *Harvard Business Review* (October 12, 2017).

Howell E. Jackson and Talia B. Gillis, “Fiduciary Duties in Financial Regulation,” in *Oxford Handbook of Fiduciary Law* (Even J. Criddle, Paul B. Miller, and Robert H. Sitkoff, eds.) (forthcoming 2019).

Howell E. Jackson and Jeffery Y. Zhang, “Private and Public Enforcement in Securities Regulation,” in *The Oxford Handbook of Corporate Law and Governance* (Jeffrey N. Gordon and Wolf-Georg Ringe) (2018).

Darius Palia, John C. Coates, IV and Ge Wu, “Are Merger Clauses Value Relevant to Bidder and Target Shareholders?,” (2018).

J. Mark Ramseyer, *Business Organizations* (New York: Aspen Publishers, 2012) (Aspen Treatise Series), Second Edition: 2017.

J. Mark Ramseyer, William A. Klein and Stephen M. Bainbridge, eds, *Agency, Partnerships, and Limited Liability Entities: Unincorporated Business Associations* (Westbury: The Foundation Press, 2001), Fourth Edition: 2018.

J. Mark Ramseyer, William A. Klein and Stephen M. Bainbridge, eds., *Cases and Materials on Business Associations: Agency, Partnerships and Corporations* (Westbury: The Foundation Press, first ed. 1991), Tenth Edition: 2018.

Mark J. Roe, “Stock Market Short-Termism’s Impact,” (2018).

Robert H. Sitkoff, “An Economic Theory of Fiduciary Law,” in *Philosophical Foundations of Fiduciary Law* (Andrew Gold and Paul Miller, eds., Oxford University Press, 2014).

Holger Spamann and Guhan Subramanian, *Corporations* (CreateSpace Independent Publishing Platform, 2017).

Leo E. Strine, Jr., “Made for this Moment: The Enduring Relevance of Adolf Berle’s Belief in a Global New Deal,” *Seattle University Law Review* (forthcoming 2018).

Leo E. Strine Jr., “Fiduciary Principles and Delaware Corporation Law: Searching for the Optimal Balance by Understanding that the World is Not,” *Oxford Handbook of Fiduciary Law* (forthcoming 2018) (with Lawrence A. Hamermesh).

Guhan Subramanian, “Case Study: The Fuji-Xerox Merger,” (forthcoming 2018).

Guhan Subramanian, “Appraisal After Dell,” in *The Corporate Contract in Changing Times: Is the Law Keeping Up?*, (Steven Davidoff and Randall Thomas, eds., University of Chicago Press) (forthcoming 2018).

J. Mark Ramseyer and Masayuki Tamaruya, “Fiduciary Principles in Japanese Law,” *Olin Center Working Paper* (2017).

Guhan Subramanian, “Go-Shops Revisited,” *Working Paper* (2018).

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, 2018, the Forum has featured a total of 6,515 posts. Currently, it features an average of 71 posts per month, and has more than 15,000 social media followers and more than

5,000 subscribers to its daily newsletter. The Forum features articles 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 by guest contributors, including prominent academics, public officials, executives, legal and financial advisors, institutional investors, and other market participants. With Forum posts having been cited in over 350 academic articles and regulatory documents, the Forum has established itself as the go-to outlet for readers interested in corporate governance and financial regulation.

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