

HARVARD LAW SCHOOL
Program on Institutional Investors
Report of Activities, July 1, 2018 – June 30, 2019

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 2018-19, the PII's director was Lucian Bebchuk, the associate director was Stephen M. Davis, and the administrative director was Kat Linnehan.

As the report documents, during the 2018-19 university year, the Program made the following contributions to research, education, and discourse in the corporate governance field:

- **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 26 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 2018, the Harvard Roundtable on Corporate Governance in March 2019, and the Harvard Roundtable on Shareholder Engagement in June 2019, with an average of 94 prominent participants, including investors, issuers, advisors, regulators, judges, and academics (See Section A);
- **Research:** The Program supported and fostered cutting-edge research on corporate governance, including 41 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 913 posts in 2018-19, bringing the total number of posts to over 7,377 since inception; the Forum has more than 12,400 Twitter followers, more than 4,600 LinkedIn followers, and more than 6,100 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 26 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 2018-19, the HIIF's member institutions were as follows:

<i>AllianceBernstein</i>	<i>JPMorgan Asset Management</i>
<i>BlackRock</i>	<i>Legal & General Investment Management America</i>
<i>BNY Mellon</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>

2. Advisory Council

During 2018-19, the HIIF's advisory council was as follows:

Lindsey Apple	<i>MFS Investment Management</i>
Jean-Frédéric Bérard	<i>Caisse de Dépôt et Placement du Québec</i>

Glenn Booraem	<i>Vanguard Group</i>
Marc Bryant	<i>Fidelity Investments</i>
Ray Cameron	<i>BlackRock</i>
Christian Correa	<i>Franklin Templeton</i>
Matthew DiGuiseppe	<i>State Street Global Advisors</i>
Linda Giuliano	<i>Alliance Bernstein</i>
John Hoepfner	<i>Legal & General Investment Management America</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>
Christina Maguire	<i>BNY Mellon</i>
Aeisha Mastagni	<i>California State Teachers' Retirement System</i>
Michael McCauley	<i>State Board of Administration of Florida</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>
Michael Shavel	<i>Wellington Management</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>
Catherine Winner	<i>Goldman Sachs Asset Management</i>

3. Conferences

The HIIF holds events that bring together leading members of the institutional investor community and influential corporate executives, advisors, academics, and public officials. During 2018-19, 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 2018

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Corporate Governance, which took place on Wednesday, October 10, 2018 at Harvard Law School. Issues discussed at the event included current regulatory proposals, such as

those regarding quarterly reporting, proxy advisors, share buybacks, and proxy process reform; managing crisis and overseeing corporate culture; current issues in executive and director pay, including pay ratio, director compensation, and gender pay disparity; a discussion of 2018 season environmental and social activism, and current issues regarding investor stewardship.

(b) Harvard Roundtable on Corporate Governance, March 2019

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable Corporate Governance, which took place on Thursday, March 21, 2019 at Harvard Law School. The event focused on recent developments and current issues in corporate governance, paying significant attention to issues that were likely to arise in the following proxy season. The Roundtable began with a keynote session featuring a conversation with the Chief Justice of the Delaware Supreme Court, Leo E. Strine, Jr. The Roundtable then proceeded to a review of the 2018 proxy season and a preview of the 2019 proxy season. Subsequently, subjects that the Roundtable discussed included: (1) social responsibility issues, including corporate purpose and culture, social responsibility proposals, and ESG metrics and disclosures; (2) current regulatory proposals and legal developments, such as those regarding the California Bill on board diversity, revision of eligibility requirements for shareholder proposal submissions, and universal proxies; and (3) board of directors, including board diversity and composition, decision-making in the age of #MeToo, board independence and evaluation.

(c) Harvard Roundtable on Shareholder Engagement, June 2019

Together with the Program on Corporate Governance, the HIIF co-sponsored the Harvard Roundtable on Shareholder Engagement, which took place on Thursday, June 13, 2019 at Harvard Law School. The event focused on recent regulatory developments and current issues in corporate governance. The Roundtable began with a keynote session featuring a conversation with Mr. William H. Hinman, Director of the Division of Corporation Finance at the Securities and Exchange Commission (SEC). Subsequently, subjects that the Roundtable discussed included: (1) current regulatory proposals and legal developments, such as those regarding revision of eligibility requirements for shareholder proposal submissions, universal proxies, disclosure issues, SEC roundtable on short-term/long-term management of public companies, and regulation of proxy advisors; (2) engagement between issuers and investors, including such topics as the current thinking on engagement, emerging consensus on governance arrangements, share buybacks, and virtual meetings; and (3) board of directors, including board skills, diversity and composition.

B. Research

The Program seeks to foster research on institutional investors and issues related to them. Books, journal articles, and working papers on such issues that were published, released, or

accepted for publication during 2018-19 by faculty members 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 and Kobi Kastiel, “The Perils of Small-Minority Controllers,” 107 *Georgetown Law Journal* 1453 (2019).

Lucian A. Bebchuk and Scott Hirst, “The Specter of the Giant Three,” 99 *Boston University Law Review* (forthcoming 2019).

Lucian A. Bebchuk and Scott Hirst, “Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy,” 119 *Columbia Law Review* (forthcoming 2019).

Lucian A. Bebchuk, Robert J. Jackson, Jr., James D. Nelson, and Roberto Tallarita, “The Untenable Case for Keeping Investors in the Dark,” 10 *Harvard Business Law Review* (forthcoming 2019).

Anat Bracha, Alma Cohen, and Lynn Connell-Price, “The Heterogeneous Effect of Affirmative Action on Performance,” 158 *Journal of Economic Behavior and Organization* 173 (2019).

Alma Cohen, Moshe Hazan, Roberto Tallarita, and David Weiss, “The Politics of CEOs,” 11 *Journal of Legal Analysis* (forthcoming 2019).

Alma Cohen and Crystal S. Yang, “Judicial Politics and Sentencing Decisions,” 11 *American Economic Journal: Economic Policy* 160 (2019).

Stephen Davis, “The Rise of Investor Stewardship,” chapter in *The Handbook of Board Governance* (John Wiley & Sons, forthcoming 2019).

Allen Ferrell, “The Benefits and Costs of Indices in Empirical Corporate Governance Research,” in *The Oxford Handbook of Corporate Law and Governance* 214 (Jeffrey N. Gordon & Wolf-Georg Ringe eds.) (2018).

Jesse M. Fried and C. Wang, “Short-Termism and Capital Flows,” 8 *Review of Corporate Financial Studies* 207 (2019).

Jesse M. Fried, “Powering Preemptive Rights with Presubscription Disclosure,” in *The Law and Finance of Related Party Transactions*, (Enriques and Tröger, eds.) (Cambridge University Press, 2019).

Howell E. Jackson, John Rady and Jeffery Y. Zhang, “‘Nobody’s Proud of Soft Dollars’: A Critical Review of Excess Brokerage Commissions in the United States and the Impact of MiFID II Reforms in the European Union,” (forthcoming).

Howell E. Jackson and Paul Rothstein, “Benefit Analysis in Consumer Protection Regulation,” *Harvard Business Law Review* (forthcoming 2019).

Howell E. Jackson, “Introduction: Thinking Hard About Systemic Risk,” in *Systemic Risk in the Financial Sector: Ten Years After the Global Financial Crisis* (Steven L. Schwarcz, ed.) (forthcoming 2019).

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

Reinier Kraakman, Karl Hofstetter and Eugene F. Soltes, “Compliance, Compensation and Corporate Wrongdoing,” Conclusions from a Roundtable at Harvard Law School of May 18, 2018 (May 2018).

J. Mark Ramseyer, “Privatizing Police: Japanese Police, the Korean Massacre, and Private Security Firms,” in *The Cambridge Handbook on Privatization* (Avihay Dorfman and Alon Harel, eds.) (forthcoming).

J. Mark Ramseyer, “The Japanese Judiciary,” in *Oxford Handbook of Japanese Politics* (Robert Pekkanen and Saadia Pekkanen, eds.) (Oxford University Press, forthcoming).

J. Mark Ramseyer and Masayuki Tamaruya, “Fiduciary Principles in Japanese Law,” in *The Oxford Handbook of Fiduciary Law* (Oxford University Press, 2019).

J. Mark Ramseyer, “Comfort Women and the Professors,” Harvard Law School John M. Olin Center Discussion Paper No. 995 (March 2019).

J. Mark Ramseyer, “On the Invention of Identity Politics: The Buraku Outcastes in Japan,” Harvard Public Law Working Paper No. 18-45 (June 2018).

J. Mark Ramseyer, Kon’in to sozeiho [Marriage and Taxation], in Hiroshi Kaneko, ed., *Sozeiho to Minpo* [Taxation and Civil Law] (Yuhikaku, 2018) (written in Japanese).

J. Mark Ramseyer and Eric B. Rasmusen, “Outcaste Politics and Organized Crime in Japan: The Effect of Terminating Ethnic Subsidies,” 15 *Journal of Empirical Legal Studies* 192 (2018).

Mark J. Roe, “Stock Market Short-Termism’s Impact,” 167 *University of Pennsylvania Law Review* 71 (2018).

Mark J. Roe and Michael Tröge, “Containing Systemic Risk by Taxing Banks Properly,” 35 *Yale Journal on Regulation* 181 (2018).

Robert H. Sitkoff, Evan J. Criddle, and Paul B. Miller, *The Oxford Handbook of Fiduciary Law* (Oxford University Press, 2019).

Robert H. Sitkoff and John Morley, "Trust Law: Private Ordering and the Branching of American Trust Law," in *The Oxford Handbook of the New Private Law* (Andrew Gold, John C.P. Goldber, Daniel B. Kelly, Emily L. Sherwin and Henry E. Smith, eds.) (Oxford University Press, forthcoming 2020).

Robert H. Sitkoff, "Fiduciary Principles in Trust Law," in *Oxford Handbook of Fiduciary Law* (Evan J. Criddle, Paul B. Miller and Robert H. Sitkoff, eds.) (Oxford University Press, 2019).

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, 2019).

Robert H. Sitkoff, "Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee," *72 Stanford Law Review* (forthcoming 2020).

Robert H. Sitkoff and John Morley, "Making Directed Trusts Work: The Uniform Directed Trust Act," *44 ACTEC Law Journal* 3 (2019).

Leo E. Strine, Jr., "Fiduciary Blind Spot: The Failure of Institutional Investors to Prevent the Illegitimate Use of Working Americans' Savings for Corporate Political Spending," *97 Washington University Law Review* (forthcoming 2019).

Leo E. Strine, Jr. and Jonathan R. Macey, "Citizens United as Bad Corporate Law," *Wisconsin Law Review* (forthcoming 2019).

Leo E. Strine, Jr., "Made for this Moment: The Enduring Relevance of Adolf Berle's Belief in a Global New Deal," *42 Seattle University Law Review* 267 (2019).

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

Leo E. Strine, Jr., "Delaware's Constitutional Mirror Test: Our Moral Obligation to Make the Promise of Equality Real: A Reflection on the Resegregation of Our Schools," *17 Delaware Law Review* 97 (2018).

Guhan Subramanian and Annie Zhao, "Go-Shops Revisited," *Harvard Law Review* (forthcoming 2020).

Guhan Subramanian, "Dealmaking: The New Strategy of Negotiauctions," (W. W. Norton) (2nd edition, 2020).

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

C. Online Forum

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, 2019, the Forum has featured a total of 7,377 posts. Currently, it features an average of 82 posts per month, and has more than 4,700 followers on LinkedIn, more than 12,000 Twitter followers, and more than 6,100 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 advisers, 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.