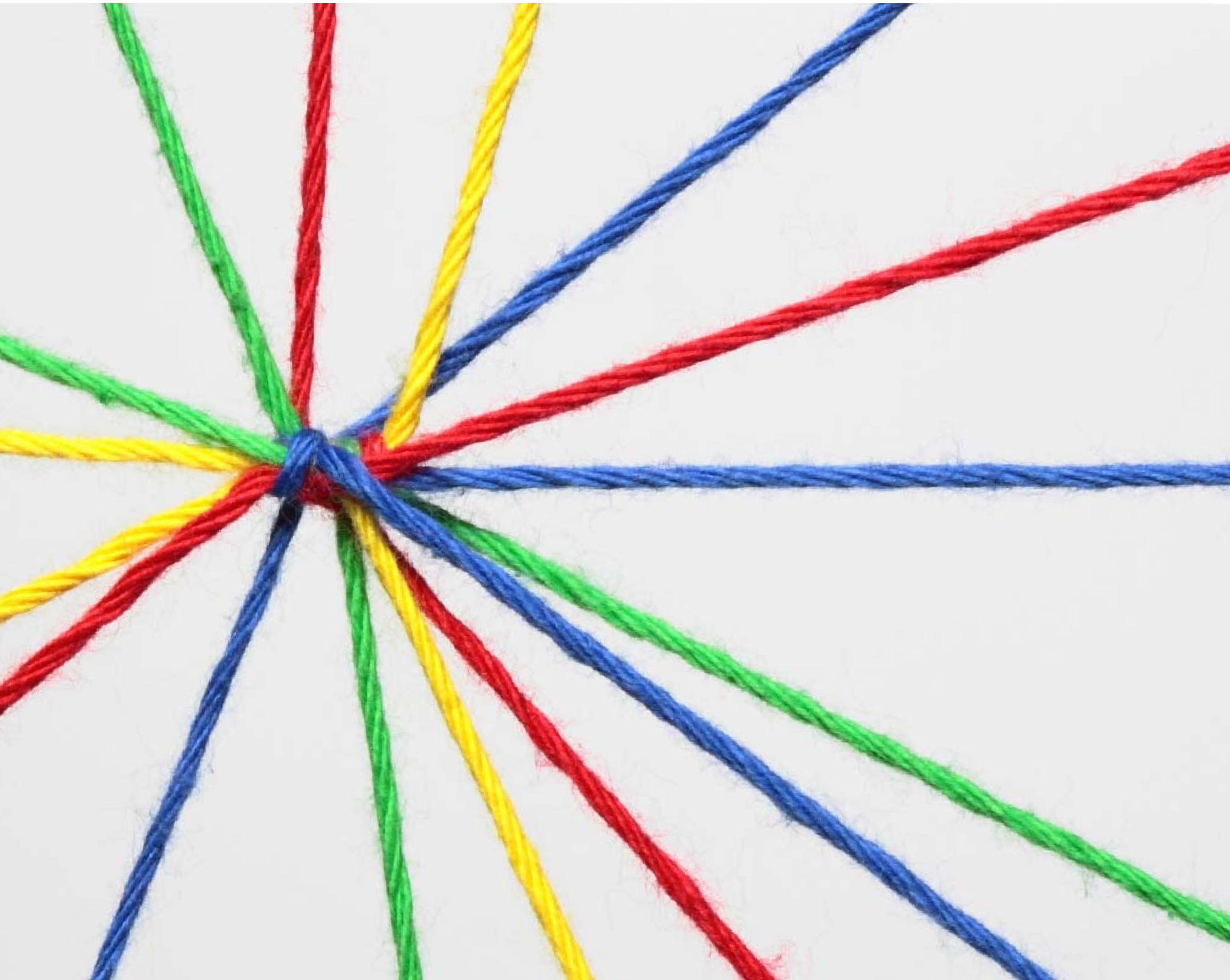
Recommendations of the Task Force on Corporate/Investor Engagement



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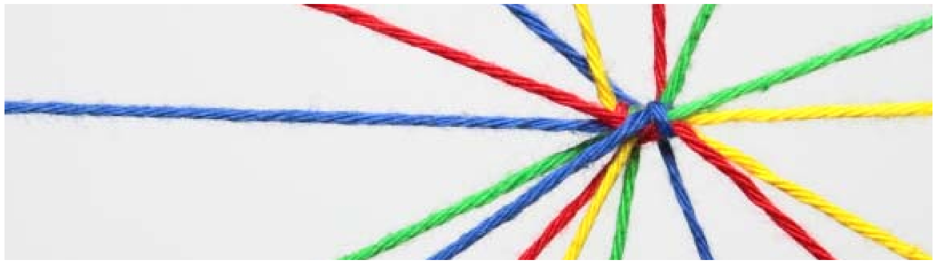
Recommendations of the Task Force on Corporate/Investor Engagement

RESEARCH REPORT 1539-14-RR



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ABOUT THIS REPORT

This report reflects the view of the members of the Task Force on Corporate/Investor Engagement, and does not represent the views of the companies or organizations with which they are affiliated. The task force intends for its research and recommendations to influence corporate directors, investors, and public policy makers in decisions regarding investor engagement in the governance of public corporations. Sponsored and supported by The Conference Board Governance Center, the task force enjoyed absolute independence and autonomy in its findings and recommendations.

THE CONFERENCE BOARD GOVERNANCE CENTER TASK FORCE ON CORPORATE/INVESTOR ENGAGEMENT

From accounting scandals to the global financial crisis, events of the past decade have damaged the reputation of business, contributing to a public distrust of business in general. In February 2013, The Conference Board Governance Center formed a task force on corporate/ investor engagement to bring together directors of public companies and investors to find solutions to help create a stronger corporate governance system through effective engagement. The task force examined the facts, the issues, and the policy implications of the current state of US corporate governance, with the objective of addressing the following questions:

- What is the optimal balance in the relative roles of management, directors, and investors in the governance of public corporations?
- What are the gaps between the optimally balanced system and the current system?
- How should boards and investors engage with one another to lead to an optimally balanced system?

SIMON M. LORNE (CO-CHAIR)
Vice Chairman and Chief Legal Officer, Millennium Partners LP; Director, Teledyne Technologies, Inc.; former General Counsel, United States Securities & Exchange Commission

PATRICIA F. RUSSO (CO-CHAIR)
Former Chief Executive Officer, Alcatel-Lucent; Director, Alcoa Inc, General Motors, Hewlett-Packard Company, KKR & Co LP, Merck & Co., Inc.

CHRISTIAN L. CAMPBELL
Senior Vice President, General Counsel, Secretary, and Chief Franchise Policy Officer, Yum! Brands, Inc.

CHARLES M. ELSON
Edgar S. Woolard Chair in Corporate Governance, Professor of Finance, and Director of the John L. Weinberg Center for Corporate Governance, Lerner College of Business & Economics, University of Delaware; Director, HealthSouth Corporation

PEGGY FORAN
Director, Occidental Petroleum Corporation; Chief Governance Officer, Vice President, and Corporate Secretary, Prudential Financial, Inc.

FRED HASSAN
Managing Director and Partner, Warburg Pincus, LLC; former Chairman and Chief Executive Officer, Schering-Plough Corporation; Director, Time Warner Inc., Valeant Pharmaceuticals International, Inc.

R. WILLIAM IDE III
Chairman, The Conference Board Governance Center Advisory Board; Director, AFC Enterprises; Partner, McKenna Long & Aldridge LLP; former President, American Bar Association, former General Counsel, Monsanto Company

LORD POWELL OF BAYSWATER
Crossbench Member, House of Lords, Parliament of the United Kingdom; Director, Caterpillar Inc., Hongkong Land Holdings Ltd., Magna Holding International, Mandarin Oriental International Ltd., Matheson and Co., Northern Trust Global Services, Schindler Holding AG, Textron Inc.

STEVEN S. REINEMUND
Sisel Distinguished Dean of Business, Professor of Leadership and Strategy, Wake Forest University School of Business; former Chairman and Chief Executive Officer, PepsiCo, Inc.; Director, American Express Company, Exxon Mobil Corporation, Wal-Mart Stores, Inc., Marriott International, Inc.

PAULA ROSPUT REYNOLDS
President and Chief Executive Officer, PreferWest, LLC; former President and Chief Executive Officer, Safeco Corporation; Director, Anadarko Petroleum Corporation, BAE Systems plc., Delta Air Lines, Inc.

BRIAN C. ROGERS
Chairman, T. Rowe Price Group, Inc.

RALPH V. WHITWORTH
Founder, Principal, and Investment Committee member, Relational Investors LLC; Director, Hewlett-Packard Company

Introduction

The Conference Board Governance Center brings corporations and investors together in a collaborative environment to address corporate governance issues of concern. One of the greatest challenges facing companies and investors is identifying the optimal roles and responsibilities of company management, directors, and investors in corporate governance. To address these challenges, The Conference Board Governance Center formed the Task Force on Corporate/Investor Engagement in 2013.

To complete its mission, the task force convened a series of public forums, reviewed reports from an advisory board of governance experts, and commissioned research with a goal of identifying how public companies and their investors should engage with each other in a way that sustains the public corporation as an engine of growth and economic prosperity for all.

Background

Public corporations have driven a twentieth-century expansion of the middle class and unprecedented opportunities for increasing standards of living. Since the turn of the twenty-first century, however, there have been high-profile scandals at some public companies—from the accounting improprieties at companies such as Enron and WorldCom to the unsustainable investments made by financial institutions that were major players in the recent global financial crisis. These events had a devastating impact not only on the companies involved, their employees, shareholders, retirees, partners, and other stakeholders, but in the case of the global financial crisis, on entire societies. These events also contributed significantly to distrust of business in general. Regulators, the public, the media, and others concluded these events were a result of governance failures and action was taken to shift greater responsibilities to boards of directors and shareholders for the oversight of US public companies.

Despite substantial efforts in the last decade to improve governance practices, the public's confidence in business remains severely shaken.

These shifts in the relative governance roles of management, directors, and investors in public companies have occurred reactively as a response to specific events rather than as a result of a thoughtful strategic analysis of how each action affects the total allocation of roles and responsibilities in the US system of corporate governance. What has been lacking is a policy development process with all stakeholders involved to determine the optimal governance system for producing economic growth and reducing attendant risks. Additionally, regulatory responses have often ignored the individual characteristics of specific companies; in this environment, one size very often does not fit all.

Through engagement, companies and investors can seek alignment on optimal governance practices for each company and its respective investors. Directors, management, and investors, due to their unique involvement in public companies, are the most knowledgeable and informed participants in the corporate governance system. They also have the most to gain from cooperating with each other to enhance performance and restore confidence in the system.

Why Thoughtful Corporate/Investor Engagement Matters

Despite substantial efforts in the last decade to improve governance practices, the public's confidence in business remains severely shaken. The Conference Board asked the following of consumers in September 2013: "Compared with before the financial crisis, how much trust do you now have in business and financial institutions?" The majority responded they still had less trust now in both business and financial institutions, nearly five years after the end of the financial crisis.[1] The financial crisis alone had a very negative impact on the average American. According to a 2013 GAO report, after rising to 10 percent, the unemployment rate remained above 8 percent for more than three years, making it the longest stretch of unemployment above 8 percent in the United States since the Great Depression.[2] The growth in income flattened and median household net worth fell by nearly 39 percent between 2007 and 2010. Many average Americans have not recovered those losses.

Why does this matter? Capitalism, which is the foundation for the American economy, depends on public trust for its legitimacy. If public corporations and their investors do not proactively engage and align with each other to ensure that public corporations continue to earn their license to operate in our society, that right will become increasingly constrained by regulation. Increasing regulatory constraints can cause inefficiencies in the market and stifle the flexibility and innovation necessary for effective capitalism and value creation, and in turn lead to adverse and unintended consequences for the economy.

The Current State of Governance

Under the current legal framework, management, the board of directors, and investors have defined roles in corporate governance:

- Directors are central to the governance of public companies. Under state law, the power to manage the affairs of a corporation is vested in the board of directors, who may and generally do delegate day-to-day management to full-time professional managers.[3] Directors have fiduciary duties to investors, subject to the business judgment rule, under which courts will not second-guess business decisions if directors acting in good faith exercise their duties of due care and loyalty to the company.

- Management is charged with executing the corporate strategy and managing the operations of the company. Similar to boards of directors, management owes fiduciary duties to investors.

- By virtue of their ownership of shares of common stock in a company, investors have legal rights defined primarily by state law and the individual corporate charter. Institutional investors have fiduciary duties to those who invest in their funds, but they do not owe fiduciary duties to the company or other investors in the company. Limited liability for investors is a founding principle of corporate law and forms the underlying basis for investors' role in the governance of companies. The primary role of investors in the governance of public companies is to elect the company's board of directors. Investors also have rights to vote on fundamental issues, such as the sale or merger of the company. They do not have the direct right to dictate corporate action on most other management matters, including executive compensation. However, investors have a legal right to an advisory vote on compensation, and may be able to put other corporate policy matters to a vote of shareholders. Through such advisory votes, and by other means, shareholders can exert a strong influence on corporate policy. In particular, the threat of a vote against a director's election is a powerful sanction because of its reputational impact.

Although the legal framework regulating the relative roles and responsibilities of directors and investors has not fundamentally changed, institutional investors have become a more influential force in shaping governance practices. This increasing influence can be attributable in part to their increasing ownership of public company equity and in part to federal regulatory changes. Individual shareholders, who once dominated ownership of stock in public companies, no longer hold significant stock directly, and when they do, they tend not to vote. At the end of 2009, institutional investors owned 73 percent of the equity in the top 1,000 companies in the United States.[4] Institutional investors also tend to vote their shares, with 91 percent voted in 2012.[5] In addition to congressional action shifting greater responsibilities to boards and investors and providing investors the right to an advisory vote on executive compensation, the SEC has engaged in rule making that has had the effect of increasing institutional investor influence in corporate elections.[6]

Real progress will be made when companies and their investors recognize and act on the need to come together to proactively resolve these complex issues.

At the same time, as institutional investors have gained more influence, their goals have also become more diverse. Their strategies are often at odds with each other, depending on whether they are seeking long-term or short-term profits. Some investors are rationally indifferent to voting because their investment strategy does not depend on company fundamentals or they do not intend to hold their shares long enough to have an opinion on corporate governance issues.

The debate continues regarding the extent to which institutional investors should be involved in corporate governance—the optimal balance of roles and responsibilities has not reached a comfortable equilibrium and tensions persist between companies and their investors. Real progress, however, will be made when companies and their investors recognize and act on the need to come together to proactively resolve these complex issues.

The Mission of the Task Force

The task force identified three key questions representing the main issues in corporate/investor engagement:

1. What is the optimal balance in the relative roles of management, directors, and investors in the governance of public corporations?
2. What are the gaps between an optimally balanced system and the current system?
3. How should public corporations and investors engage with one another to lead to an optimally balanced system?

The task force intends for its research and recommendations to influence corporate directors, investors, and public policy makers in decisions regarding investor engagement in the governance of public corporations.

Task Force Recommendations

The recommendations of the task force are intended to align public corporations and their investors to optimize the system of corporate governance and to jointly take responsibility for increasing public trust in business by instilling a culture of integrity, transparency, and engagement in the governance of public corporations.

1 **As a fundamental principle of corporate governance, the task force recommends that directors and investors endorse the proposition that the interests of all stakeholders must be taken into account to achieve sustainable shareholder value. While the ultimate goal of a public corporation is to maximize shareholder value, it can only do so on a sustainable basis by serving all of its constituents. An optimally balanced system of corporate governance is based on the premise that serving the interests of major constituencies of corporations—customers, employees, creditors, suppliers, communities, and the environment—is essential to maximizing shareholder value.**

While academics have long debated whether the “stakeholder” model or the “shareholder primacy” model is the optimal governance model for public companies, the shareholder primacy model has prevailed in recent years.[7]

In considering the optimal balance of roles between investors and the other constituents of a public company, too often the issue is seen as an “either/or” question: the purpose of a corporation is either to maximize shareholder value or serve the interests of all of its stakeholders. The best managed corporations have long understood that these two concepts are not mutually exclusive. Indeed, the only way to achieve sustainable shareholder value is to pay attention to and serve the constituents of the company who create that value. Disseminating the view that the two concepts are not mutually exclusive is an important step in achieving an optimally balanced system.

> **“…executives must infuse their organizations with the perspective that serving the interests of all major stakeholders—employees, suppliers, customers, creditors, communities, the environment—is not at odds with the goal of maximizing corporate value; on the contrary, it’s essential to achieving that goal.”[8]**

There is a widespread public perception that corporate leaders manage companies primarily to increase short-term share price at the expense of employees, communities, and long-term prosperity of the enterprise. While endorsing the proposition that the interests of all stakeholders must be considered to achieve sustainable shareholder value will not change this perception, managing, demonstrating, and articulating the stakeholder considerations in company decision-making processes can help restore public trust.

2 The central role played by boards of directors in the oversight of public corporations reflects an optimal balance in corporate decision making. Directors should take into account investors' viewpoints on the governance and strategy of the corporation in the exercise of their fiduciary duties to all investors and to the company as a whole. Investors should hold directors accountable through effective engagement and the election of directors.

Regulators and commentators increasingly look to corporate governance developments in other countries as potential avenues for regulation of US public companies. In some countries, regulators are considering increasing the role of investors in corporate decision making by requiring shareholders to take actions that are binding on the corporation, such as a mandatory say-on-pay vote.

The task force believes that the central role of directors in the current system is optimal. Directors, by virtue of their deeper company knowledge and experience, are in the best position to make informed decisions regarding the governance of public companies and mediate the interests of the company's stakeholders. In addition, directors have fiduciary duties to the company and all of the company's investors in their oversight of the day-to-day management of the affairs of the corporation. Investors are not in the best position to exercise oversight over a wide variety of operational issues. Investors are an extremely diverse group, ranging from those who are actively engaged to those who are completely disengaged, and the majority of investors' holdings in public corporations are held by institutions that are highly diversified, without a significant stake in or the ability to sustainably focus in depth on any one company. From a legal standpoint, investors enjoy limited liability and do not owe fiduciary duties to other investors or to the company, which is consistent with their more limited role in corporate decision making.

The only way to achieve sustainable shareholder value is to pay attention to and serve the constituents of the company who create that value.

Even though directors are best positioned to make most of the critical company decisions entrusted to them, the governance of public companies also benefits from taking into account the views of today's highly sophisticated institutional investors. Directors should consider these viewpoints in the context of the exercise of their fiduciary duties to all investors and to the company as a whole.

Today, there is a real possibility that directors may not be reelected if they do not implement an advisory shareholder proposal, even if the proposal does not receive the support of a majority shares outstanding. Just as directors should be reluctant to choose a course that is inconsistent with the views of investors on important matters, investors should carefully consider whether to use their right to vote against directors due to an advisory shareholder proposal. Open and productive communications can reduce or even eliminate disagreements and result in governance practices acceptable to both companies and investors, avoiding the need to take punitive actions to enforce governance standards.

3 To the extent companies are able to satisfy their investors about the quality of board of director oversight, trust between investors and the companies they invest in will be enhanced.

The single most important corporate governance factor is the quality of board oversight. Directors should have appropriate processes in place to ensure that they have a good understanding of the company's business, which will enhance a director's ability to provide meaningful guidance to management on strategic options and will result in better decision making by the board. In some circumstances, such as a proxy contest for the election of directors or a major transaction, it is critical that investors have confidence in the board's ability to oversee the strategic direction of the company.

a Directors should review third-party information as well as briefing materials prepared by management. Directors should have access to a full range of information about the company, such as analysts' reports and media coverage about the company, its competitors, and the industry.

b Directors should encourage an atmosphere of trust that enhances the flow of information from management. While trust is established over time and with experiences confirming trustworthiness, some structures help to support the flow of information, such as scheduling regular management/board leadership conference calls between meetings and setting an expectation that the CEO will brief the board on important issues and events as they arise.

c Directors should not confine their understanding of the enterprise solely to boardroom meetings. Regular visits to company operations can provide a deeper understanding of the business and may also provide an indication of whether company policies are being implemented. Understanding competitors adds an outside and independent perspective.

d Directors should be prepared to discuss issues at board meetings after having read the briefing materials in advance of the meeting and having devoted sufficient thought to the issues to participate in the meeting on an informed basis. Directors should hold each other accountable for devoting sufficient time to board matters to be fully informed when discussing issues at a board meeting. Management should provide efficient briefing materials well enough in advance of the meeting to allow for an informed discussion.

e Independent directors should have leadership in the form of a lead director or independent chair to ensure that board agendas cover critical areas of concern to the directors.

The single most important corporate governance factor is the quality of board oversight.

4 Investors should disclose their policies and principles on voting and how companies can contact them. If they decide to vote, they should devote sufficient resources to make informed voting decisions.

If institutional investors use proxy advisors, they should use a proxy advisor's recommendation only as one data point to supplement their own analysis.[9] The investors represented on the task force and advisory board have adopted policies that are best practice models, which can be found in the Guidelines for Engagement described in this report.

5 Because proxy advisory firms play an important role in advising investors how to vote in corporate elections, they should adhere to the highest standards of conduct in terms of transparency and avoidance of the appearance of conflicts of interest. To avoid conflicts of interest, proxy advisors should disclose in their recommendations to investors whether they have provided consulting advice or other services to the company they are evaluating, whether they have received fees from the proponent of a shareholder proposal they are evaluating, and whether their affiliates are engaged in advocating for a proposal on which they are making a recommendation.

The role of proxy advisors in the governance of public companies was the topic of a public forum, an advisory board meeting, and a meeting of the task force—all of which involved heated debate and discussion. It is fair to say that although there is agreement on this recommendation, public companies and investors differ substantially on their views of proxy advisors. Companies generally agree that proxy advisors have too much influence and not enough accountability. Investors generally believe that companies are exaggerating the influence of proxy advisors on corporate elections and that there is sufficient accountability in the current system. While the task force did not resolve these differences, the members did agree on principles of transparency and avoidance of conflicts of interest.[10]

6 Companies and their investors should both ensure that their incentive programs and evaluation systems support sustainable shareholder value.

In an optimal governance system, both investors and public companies would design incentives and performance evaluation systems to align with their strategies for creating sustainable shareholder value. While no governance issue engenders greater controversy and public attention than CEO/executive compensation, organizational incentives and evaluation systems at every level can contribute to the types of behaviors that led to the recent financial crisis. Whether it is equity awards or bonuses for executives or evaluation of investment advisors, compensation and evaluation policies should support and encourage sustainable shareholder value.

7 **The task force recommends the Guidelines for Engagement, developed by the advisory board to the task force, which provide a comprehensive road map for thinking through a strategy for direct engagement between public companies and their investors.**

Key conclusions from the guidelines include the following:

- An appropriate engagement strategy depends on the facts and circumstances of each company and investor.
- For many companies and investors, engagement will enhance trust and confidence, but not all companies or all investors need to engage directly with each other or engage all the time. Overengagement can lead to systemic overload and inefficient use of limited resources.
- Direct engagement between directors and institutional investors can be beneficial in special circumstances, but it should not be a routine method of engagement for most US companies and investors.

Proxy advisors should adhere to the highest standards of conduct in terms of transparency and avoidance of the appearance of conflicts of interest.

8 **Regulators can improve the environment for governance of public companies and engagement between companies and their investors. Although regulations are a limited tool in addressing complex issues, the task force has identified several issues where regulators can improve the overall environment for company and investor engagement.**

These issues include the following:

Less can be more in disclosure required of public companies Many commentators agree with SEC Chair Mary Jo White, who recently observed that the expansion of mandatory disclosure requirements may lead to "information overload," not just in volume but also in the complexity of presentation.[11] In an optimally balanced system of governance, publicly filed documents should inform investors of material information relevant to their investment. To the extent investors seek additional information about company policies and practices, those disclosures may best be presented in other ways, such as in company websites.[12] The task force believes a thoughtful examination of this issue by the SEC could improve public disclosures and contribute to greater individual investor participation.

An examination of the proxy voting system is warranted Corporate elections have become less routine and more contested as investors take a more active role in the governance of public companies. Yet it is extremely difficult to audit a corporate election to confirm that shares were voted as intended because of the complex structure for voting company shares.[13] A systemic review of this structure should be brought forward by the SEC from its 2010 "proxy plumbing" concept release.

Challenges to the corporate voting system include the following:

1 The inability of companies to identify their investors in a timely and accurate manner limits the ability of companies to engage with investors. While the task force recognizes the desire of some investors to avoid disclosure of their identity, the system can be improved without eliminating the ability of some institutional investors to keep their ownership private. Proposals have been filed with the SEC to shorten the time periods for ownership disclosures by investors, and the task force believes shortening these time frames can improve engagement and transparency in the market by providing companies better and more timely information regarding their institutional investors.[14]

2 All institutional investors should not be required to vote in every election. Some institutional investors have a rational basis for refraining from voting, but in the belief that they are required to vote, they may vote by outsourcing their voting decisions.[15]

3 The impact of share lending on voting and investor engagement should be examined. A substantial amount of stock is on loan from shareholders like pension funds, mutual funds, and foundations to option traders, hedge funds, and other asset managers who borrow the securities predominantly for the purpose of engaging in short selling.[16] At the end of January 2012, the balance of securities on loan was $1.8 trillion globally.[17] Under standard lending arrangements, the lender loses voting rights until the share is "returned."[18] Share lending negatively impacts engagement between investors and companies, which do not know whether the investor will actually vote due to its active share lending strategy. There is a need for a thorough review and resolution of the issues raised by this growing practice.

4 The impact of systemic changes in the capital markets should be examined. Today, high-frequency trading constitutes about half of all stock trades in the United States.[19] While engagement with management is generally absent from the high-frequency trading strategy, decisions that the traders make can send "market messages" about company value that can have cascading effects. A 2013 study found that the presence of short-term investors within a company's shareholder base was strongly related to temporary price distortions in that company's stock price.[20] There is a need to evaluate the impact of high-speed trading on confidence in capital markets.

Direct engagement between directors and institutional investors can be beneficial in special circumstances.

Additional Research and Analysis Prepared for the Task Force on Corporate/Investor Engagement

1 The Conference Board Governance Center White Paper: "What Is the Optimal Balance in the Relative Roles of Management, Directors, and Investors in the Governance of Public Corporations?" March 2014, written in collaboration with Cleary Gottlieb Steen & Hamilton LLP, whose principal authors are Suneela Jain and James D. Small III, and The Conference Board Governance Center, whose principal contributors are Barbara Blackford, senior advisor, and Donna Dabney, executive director.

A comprehensive review of the history of the relative roles of management, directors, and investors in corporate governance; the current status of the balance of these roles; issues in the system; and the current state of the debate on these issues.
Available at www.conferenceboard.org/taskforce/whitepaper

2 The Conference Board Governance Center Advisory Board on Corporate/Investor Engagement, "Guidelines for Engagement," The Conference Board, March 2014.

A practical set of guidelines for direct engagement between senior management and directors of public corporations and their investors. These guidelines were developed by the advisory board to the task force—a group of governance experts from public corporations, major institutional investors, academia, and law firms.
Available at www.conferenceboard.org/taskforce/guidelines

The advisory board includes:

PAUL F. WASHINGTON (CHAIR)
Senior Vice President, Deputy General Counsel & Corporate Secretary, Time Warner Inc.

DONNA F. ANDERSON
Vice President and Head of Global Corporate Governance, T. Rowe Price Group, Inc.

DAVID M. BECKER
Partner, Cleary Gottlieb Steen & Hamilton LLP

LYDIA I. BEEBE
Corporate Secretary and Chief Governance Officer, Chevron Corporation

GLENN BOORAEM
Principal and Fund Controller, Vanguard Group, Inc.

SHELLEY J. DROPKIN
Deputy Corporate Secretary and General Counsel, Corporate Governance, and Managing Director, Citigroup, Inc.

MICHELLE EDKINS
Global Head of Corporate Governance and Responsible Investment, BlackRock, Inc.

KAYLA J. GILLAN
Leader, PwC Investor Resource Institute

HOLLY J. GREGORY
Partner, Sidley Austin LLP

MATTHEW LEPORE
former Corporate Secretary and Chief Governance Counsel, Pfizer Inc.; current Senior Vice President and General Counsel, BASF Corporation

MICHAEL P. MCCAULEY
Senior Officer, Investment Programs and Governance, Florida State Board of Administration

ANN C. MULÉ
Associate Director, John L. Weinberg Center for Corporate Governance, Lerner College of Business & Economics, University of Delaware

CHARLES NATHAN
Partner and Senior Advisor, RLM Finsbury

MARK E. PREISINGER
Director, Corporate Governance, The Coca-Cola Company

EDWARD B. ROCK
Saul A. Fox Distinguished Professor of Business Law, University of Pennsylvania Law School

ANNE SHEEHAN
Director of Corporate Governance, California State Teachers' Retirement System

JOHN A. SEETHOFF
Vice President and Deputy General Counsel, Corporate, Microsoft Corporation

LYNN STOUT
Distinguished Professor of Corporate and Business Law, Cornell University Law School

WILLIAM ULTAN
Senior Managing Director, Corporate Governance, Morrow & Co., LLC

3 Leslie N. Silverman and Julie L. Yip-Williams, "The Underpinnings of Corporate Governance Approaches and the Shareholder Value Model," The Conference Board, *Director Notes* Vol. 5 No. 14, July 2013.

Based on research generated from the task force, this *Director Notes* endorses proposals by Dominic Barton, global managing director of McKinsey & Company, in "Capitalism for the Long-Term," *Harvard Business Review*, March 2011: Business and finance should revamp incentives to focus their organizations on the long term; business leaders should adopt the perspective that serving the interests of all major stakeholders—employees, suppliers, customers, creditors, communities, and the environment—is essential to maximizing corporate value; and pubic company boards should govern like owners.
Available at www.conferenceboard.org/taskforce/underpinnings

4 Arthur H. Kohn and Julie L. Yip-Williams, "The Separation of Ownership from Ownership: The Concerns Raised by Institutional Investors as Intermediaries," The Conference Board, *Director Notes* Vol. 5 No. 22, November 2013.

A prior *Director Notes* examined the issue of separation of ownership from control inherent in the widely held public company. This *Director Notes* focuses on issues associated with the separation of ownership within the structure of institutional investments.
Available at www.conferenceboard.org/taskforce/ownership

Endnotes

1 ***Consumer Confidence Survey***®, The Conference Board, September 2013.

2 *Financial Regulatory Reform*, report to Congressional Requesters by the United States Government Accountability Office, January 2013, pages 17-19.

3 State corporation statutes state that directors manage the affairs of the corporation. In practice, most boards of directors delegate day-to-day management to professional managers.

4 In the early 1950s, institutional investors held less than 10 percent of the stock of the largest 1,000 public companies. Suneela Jain, Barbara Blackford, Donna Dabney, and James D. Small III, "The Conference Board Governance Center White Paper: What Is the Optimal Balance in the Relative Roles of Management, Directors, and Investors in the Governance of Public Corporations?" 2014; see Part II: Legal, Social, and Market Trends That Have Influenced the Historical Allocation of Rights, Chapter A, "The Increased Influence of Institutional Investors Resulting from Concentration of Ownership in Institutional Investment and Savings Vehicles, Changes in Voting Rules and Practices, and More Assertive Shareholder Activism," (http://www.conferenceboard.org/taskforce/whitepaper).

5 "Does Shareholder Behavior Vary by Company Size? A Closer Look at Shareholder Voting," *ProxyPulse Second Edition* 2013, p.2 (http://media.broadridge.com/documents/Broadridge-PwC-ProxyPulse-Second-Edition.pdf). This figure does not take into account hedge fund investments because they are generally not required to be reported. In 2012, only 29 percent of individual investors voted, and they held about 30 percent of shares outstanding of larger companies.

6 Individual investor voting participation declined substantially after the SEC adopted rules permitting distribution of proxy materials through the internet rather than mailing paper copies, a consequence that was the opposite of the purpose of the rules. Another significant regulatory change occurred in 2009 that further unintentionally reduced the influence of individual investors: the SEC amended NYSE Rule 452 to eliminate discretionary broker voting on behalf of individual investors, approving a proposal that generally increased the potential power of institutional investors to influence director elections. Following that rule change, it is more difficult for a NYSE-listed company to obtain approval of a slate of nominees in the face of opposition from institutional investors. Finally, a rule adopted by the SEC in 2004 has widely been interpreted to require all investment advisors to vote, which may account for the high level of shares voted by institutional investors, although the release adopting the rule itself, quoted at note 15, *infra*, states that it does not necessarily require voting. See Jain et al., "The Conference Board Governance Center White Paper," 2014 (http://www.conferenceboard.org/taskforce/whitepaper).

7 Jain et al., "The Conference Board Governance Center White Paper," 2014 (http://www.conferenceboard.org/taskforce/whitepaper).

8 Dominic Barton, "Capitalism for the Long Term," *Harvard Business Review*, March 2011.

9 Proxy advisors are private, for-profit consultants who provide voting advice to institutional investors on voting issues at shareholder meetings. About 97 percent of the proxy advisory business in the United States is controlled by two firms—ISS and Glass Lewis. A primary rationale for the widespread use of these proxy advisors is the financial savings they bring to investors who hold a highly diversified portfolio of investments. See Jain et al., "The Conference Board Governance Center White Paper," in particular Part III: Principal Issues Moving Forward, Chapter D, "Do Proxy Advisory Firms Replace, Rather than Augment, the Shareholder Voice, and Should the Proxy Advisory Industry Be Subject to Greater Regulation and Oversight?" 2014 (http://www.conferenceboard.org/taskforce/whitepaper).

10 For a discussion of these issues, see Jain et al., "The Conference Board Governance Center White Paper," Part III: Principal Issues Moving Forward, Chapter D, 2014 (http://www.conferenceboard.org/taskforce/whitepaper).

11 Mary Jo White, "The Path Forward on Disclosure," speech delivered to the National Association of Corporate Directors Leadership Conference in National Harbor, Maryland, October 15, 2013 (http://www.sec.gov/News/Speech/Detail/Speech/1370539878806). See also Commissioner Troy A. Paredes, Remarks at The SEC Speaks, Washington, DC, Feb. 22, 2013 (http://www.sec.gov/news/speech/2013/spch022213tap.htm).

12 For example, a section of the Dodd-Frank legislation requires public companies engaged in the commercial development of oil, natural gas, or minerals to disclose payments made to a government for the purpose of developing these resources. The issue Congress was trying to address with this law was "resource curse," where the payments for oil, gas reserves, or minerals owned by poor countries end up lining the pockets of the rich or being squandered on showcase projects rather than productive investments. This is the type of disclosure that tends to result in information overload that can undermine the usefulness of annual reports to investors.

13 "Concept Release on the US Proxy System," *Securities and Exchange Commission*, July 2010 (http://www.sec.gov/rules/concept/2010/34-62495.pdf).

14 For example, the New York Stock Exchange recommends that large institutional investors (those holding $100 million or more) disclose their holdings in companies two business days after the end of a quarter rather than 45 days under the current rule.

15 This suboptimal practice arose in part from SEC Rule 206(4)-6, which makes it fraudulent for an investment advisor to exercise proxy voting authority without having procedures reasonably designed to ensure that the investment advisor votes in the best interest of its clients. This rule has been cited as a requirement that investment advisors vote in all circumstances. However, the SEC stated in adopting this rule, "We do not suggest that an adviser that fails to vote every proxy would necessarily violate its fiduciary obligations. There may even be times when refraining from voting a proxy is in the client's best interest, such as when the adviser determines that the cost of voting the proxy exceeds the expected benefit to the client." See "Final Rule: Proxy Voting by Investment Advisers," *Securities and Exchange Commission*, Investment Advisers Act Release No. IA-2106, Jan. 31, 2003 (http://www.sec.gov/rules/final/ia-2106.htm).

16 Securities loans create an opportunity for lenders to generate additional income from their holdings outside the return of the individual equities. Craig Feldman, "S&P Indices: Transparency in the Securities Lending Market," *Standard and Poor's*, January 2010 (http://www.spindices.com/documents/research/Transparency_in_the_Securities_Lending_Market_IntroFinal_Jan2010.pdf).

17 "Securities Lending Best Practices: A Guidance Paper for US Mutual Funds," eSEC Lending, 2012, p. 1 (http://www.eseclending.com/pdfs/Securities_Lending_Best_Practices_Mutual_Funds_2012.pdf).

18 Henry T.C. Hu and Bernard S. Black, "The New Vote Buying: Empty Voting and Hidden (Morphable) Ownership," *Southern California Law Review* 79, 2006, p. 816.

19 Matthew Philips, "How the Robots Lost: High-Frequency Trading's Rise and Fall," *BusinessWeek*, June 6, 2013 (http://www.businessweek.com/printer/articles/123468-how-the-robots-lost-high-frequency-tradings-rise-and-fall). This represents a decrease in high-frequency trading levels. Between 2008 and 2011, Rosenblatt Securities estimates that as many as two-thirds of all stock trades in the United States were executed by high-frequency firms.

20 Martijn Cremers, Ankur Pareek, and Zacharias Sautner, "Stock Duration and Misvaluation," September 19, 2013 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2190437).

About the Reporters

Donna Dabney is executive director, The Conference Board Governance Center, and leads the efforts of The Conference Board in the area of corporate governance. Prior to joining The Conference Board, Dabney was vice president, corporate secretary, and corporate governance counsel of Alcoa Inc.

Dabney has extensive experience in corporate governance matters, having served as a member of management for over 15 years on the boards of Alcoa and Reynolds Metals Company. She is a recognized expert on governance issues related to executive compensation. At Reynolds she was a member of the senior management team with oversight responsibility for the global operations of the company and served as chief mergers and acquisitions counsel and secretary to the board of directors. When Alcoa acquired Reynolds in 2000, she joined Alcoa as its secretary, assistant general counsel, and group counsel of the consumer, packaging, distribution, and construction group, where she was part of a three-member team with oversight management responsibility for this business. As part of her work with the Alcoa board of directors, Dabney gained substantial experience with sustainable development in the Amazon region of Brazil.

Before joining Reynolds, she practiced law with the Richmond, Virginia, firm of McGuireWoods LLP and served on the faculty of Old Dominion University. She is a 1980 graduate of the University of Virginia School of Law and a member of the Order of the Coif legal honorary society. Dabney is a member of the board of directors of American Forests, the New York advisory board of the Society of Corporate Secretaries and Governance Professionals, and a member of the faculty of the Citadel Directors Institute and of the Practicing Law Institute.

Barbara Blackford is senior advisor, The Conference Board Governance Center and serves as the reporter for The Conference Board Task Force on Corporate/Investor Engagement. Blackford recently retired from Superior Essex Inc., a Fortune 750 wire and cable manufacturer acquired by LS Corp, a leading South Korea exchange-listed company and a member of the LS Group. She has also served as general counsel of AirGate PCS, a NASDAQ-listed Sprint affiliate and associate general counsel of Monsanto Company. While at Monsanto, she was head of the corporate securities, corporate governance, and mergers & acquisitions legal functions and oversaw more than $40 billion in M&A activity. In all of these roles, she was primarily responsible for providing legal support to the board of directors, securities compliance, and executive compensation.

Previously, Blackford served as the reporter for The Conference Board Task Force on Executive Compensation. She has served on the board of directors of the Society of Corporate Secretaries and Governance Professionals and is a frequent speaker on governance and securities laws.

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PATRICIA F. RUSSO (CO-CHAIR)

CHRISTIAN L. CAMPBELL

CHARLES M. ELSON

PEGGY FORAN

FRED HASSAN

R. WILLIAM IDE III

LORD POWELL OF BAYSWATER

STEVEN S. REINEMUND

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Publications Team

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Managing Editor Timothy Dennison
Creative Director Peter Drubin
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To become a member, please contact:

Marcel Bucsescu
Assistant Director, Governance Center
+1 212 339 0476
marcel.bucsescu@conferenceboard.org

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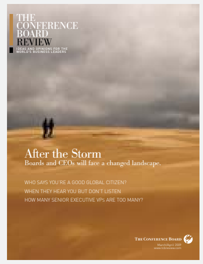

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THE CONFERENCE BOARD, INC.

AMERICAS
+ 1 212 759 0900
customer.service@conferenceboard.org

EUROPE/AFRICA/MIDDLE EAST
+ 32 2 675 54 05
brussels@conferenceboard.org

ASIA-PACIFIC
+ 65 6325 3121
service.ap@conferenceboard.org

SOUTH ASIA
+ 91 22 23051402
admin.southasia@conferenceboard.org

THE CONFERENCE BOARD OF CANADA
+ 1 613 526 3280
www.conferenceboard.ca