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SESSION REPORT

582

The Courageous Director: Can Corporations Better Serve People, Planet, and Profit?

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Session 582

October 5 to 7, 2017
Salzburg, Austria

The Courageous Director: Can Corporations Better Serve People, Planet, and Profit?

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Introduction

Within the last year, Volkswagen and several of its executives and employees have pled guilty to criminal charges stemming from a scheme to cheat environmental standards; Wells Fargo Bank received a \$100 million fine for inducing its employees to secretly and illegally open unauthorized accounts; and Google grappled with how to respond to a leaked internal memo regarding diversity in the workforce that the public perceived as demonstrating male chauvinistic bias.

These were among the many scandals – from cybersecurity breaches, environmental disasters, product recalls, and poor working conditions – that regularly spark public outrage against faceless corporations. Even as private sector leaders achieve fame by engaging socially and championing brands that claim to improve quality of life, consumers, investors and employees increasingly demand that corporations act in ways beneficial to society. Looking forward, boards of directors will need to remain ahead of rapidly-evolving trends and address deceptively simple questions. What does the company seek to achieve, and where does it see its place in society?

Corporate governance implies ethical leadership through ensuring accurate reporting, sustainable finances, delivery of long-term strategic goals, good relationships with consumers, regulators, and stakeholders, and a safe and functional work environment. Failures of governance impact shareholder value by harming brands, profits, and ability to plan for the future. New technologies and disruptors are running ahead of legislators. The more that corporate scandals trigger regulatory responses, the more money and board time is eaten up by reactive compliance at the expense of strategy, without necessarily showing a return in better or more ethical performance. Less diverse boards may miss new perspectives, trends, and risks entirely.

Courageous directors, many with their roots in entrepreneurship, have unprecedented opportunities to serve as global influencers, remaining connected to their communities and popular opinion. The private sector will have a pivotal role to play in achieving the UN's Sustainable Development Goals (SDGs) by 2030. For the private sector, meeting the SDGs can turn a profit and create new jobs – building new and better technology, financing projects to optimize human potential or build infrastructure, opening new markets, and maximizing use of scarce resources or devising new ones. Successful and diverse boards can realize this potential and contribute to better governance, better returns, and better social behavior through institutionalization of global trends, ability to measure and determine exposure to risk (including social and economic factors), and communicating objectives internally and externally.

“Corporate scandals are bad for business – understanding risks and opportunities, and being able to communicate objectives effectively to staff and to the public, can enable corporations to maximize their bottom line while also doing the right thing for the global community.”

Charles Ehrlich
Program Director
Salzburg Global Seminar

The *Salzburg Global Forum on Corporate Governance*, launched in 2015, facilitates critical thinking about changing regulatory and economic environments, comparative practices, and the roles and duties of directors. It convenes an annual high-level meeting to focus on key trends and risks in long-standing corporate governance practices in multiple jurisdictions at a time of rapidly shifting societal expectations and political pressures. By providing a neutral setting for cross-cutting conversation across national boundaries on practical standards, expectations, and opportunities, the Forum enables candid in-depth exchanges among participants to advance understanding of corporate best practices and devise concrete recommendations.

This third session of the Forum, *The Courageous Director: Can Corporations Better Serve People, Planet, and Profit?* explored the role of the corporation as a good citizen, while assessing techniques to keep boards of directors alert, active, and effective in meeting their fiduciary duties in the current and future landscapes. It explored how directors might emerge as global thought leaders, to ensure multi-national corporations can succeed both in achieving profit and in satisfying conflicting demands of the jurisdictions and societies in which they operate.

This report highlights the significant outcomes from the discussions at the session, including breakout groups which analyzed the scandals affecting Volkswagen, Wells Fargo, and Google. The discussions took place under the Chatham House Rule to allow for free and open exchange among peers, sharing their personal thoughts and opinions off the record rather than as representatives of their respective firms and institutions, and thus the main body of the report does not include any attributed comments. Several participants, however, offered their thoughts on the record; these can be found as inserts throughout the report.



Session Report

The Courageous Director

Salzburg Global Seminar invited participants to explore whether and how directors might act as change agents to serve causes that transcend the corporations they oversee. The diverse participants – including chief executives, board directors, senior managers, policymakers, lawyers, academics, and fund managers with work experience in many countries across six continents – felt strongly that directors of multinational corporations should demonstrate courage. However, they did not always agree on what qualified as “courageous.”

Being a courageous director in some cases might be a director willing to take the lead on a prevailing trend, even if the ultimate destination remains unclear; in other cases, it might be a director who speaks up to challenge existing trends; or, still, it might just be listening to the advice of colleagues and supporting change even if it means departing from what the director has become used to. But the courage must be backed up by arguments and moral values, and presented in a collegial way that will advance the objectives of the corporation.

A brief comment made during the last day of the session perhaps captured the sentiment among many participants:

“Whether you’re on the left or on the right, irrespective of geographic location, whether you’re economically conservative or fiscally liberal, there seems to be a strong consensus that the corporation should be a good corporate citizen.”

Of course, not all participants agreed on what constitutes good corporate citizenship either. There were spirited discussions on a number of topics, including the role of the objectives of the corporation, the role of shareholders, how culture might be formed and disseminated within the corporate enterprise, and the consequences of current compensation practices, to name a few. But the overarching message shared by many in attendance was this: Companies can do well by doing good. Hence, whether motivated by enlightened self-interest or desire to promote a cause, rarely has there been a more appropriate time for directors to act courageously by being champions of issues that concern society.

“Whether you’re on the left or on the right, irrespective of geographic location, whether you’re economically conservative or fiscally liberal, there seems to be a strong consensus that the corporation should be a good corporate citizen.”

The Corporation as a Good Citizen

What is a satisfactory standard of the objectives of the corporation in 2017? Who should define how a good citizen acts?

As a useful starting point, the session opened by asking whether the definition of the purposes of the corporation contained in the *Principles of Corporate Governance*, published in 1993 by the American Law Institute (ALI), is still accurate and whether it requires adjustment as applied to US corporations today and to corporations worldwide. Although the *Principles* were crafted in a specifically US context, ALI's work in general serves as a model around the world for its legal acumen, and in particular on corporate governance due to the influence US practices have had more widely. The *Principles* provide that a corporation "should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain." They also recognize, however, that although this objective may not thereby be enhanced, the corporation:

1. Must conduct its business within legal boundaries;
2. May take into account ethical considerations reasonably regarded as appropriate to doing business responsibly; and
3. May devote a reasonable amount of its resources to public welfare and other humanitarian, educational and philanthropic purposes.¹

Although the *Principles* capture the views of many session participants, some—particularly participants from Europe and Asia—stressed that profit maximization is, in their view, too narrow an objective. Others also expressed concern that the ALI standard "takes the spirit out of the letter" by focusing too much on the financial justifications for good corporate citizenship. Still others suggested that, given the positive momentum of environmental, social and governance ("ESG") issues in recent years, the *Principles* do not adequately recognize that pursuit of social goals is often consistent with long-term profit enhancement.

To further understand the objectives and corresponding motivations of corporations around the globe, participants debated a series of hypothetical scenarios in which a public company board is considering socially desirable but financially questionable proposals.

¹ The American Law Institute, *Part II: The Objective and Conduct of the Corporation*, vol. 2, *Principles of Corporate Governance: Analysis and Recommendations* 55 (St. Paul: American Law Institute Publishers, 1994), 55-66.



SOCIAL VS. FINANCIAL CONCERNS

In one scenario participants were asked, as board members of a large global corporation, to analyze a proposal to move the company to green energy at a cost of \$500 million spread over five years in the interest of reducing the company's carbon footprint. Many participants were quick to emphasize the need for a clear understanding of how the proposal would enhance long-term profitability. Others stressed that certain unquantifiable "soft factors"—e.g., recruitment of millennials (widely viewed during the session as more sensitive to ESG considerations than older generations), effect on the community, and differentiation from competitors—would also be material, so long as they were presented within a sound business plan. As offered by one UK director, "If you're going to attract the type of talent that you want in an organization, then your motivation cannot only be bottom line profit."

In another scenario, participants were asked, as board members of a chain of restaurants located in Las Vegas, Nevada, USA, to consider (at the insistence of the company's majority shareholder) whether the chain could stop selling alcoholic beverages because alcohol consumption conflicted with the religious beliefs of the majority shareholder. Nearly all participants indicated that they would reject the proposal, reasoning that the benefits from taking the moral high-ground in Las Vegas would presumably pale in comparison to the proposal's probable negative effect on the company's bottom line. They thought the proposal probably would not meet the ALI standard of ethical consideration reasonably regarded as appropriate to the responsible conduct of business.

As can be inferred from the participants' general discomfort in grounding the analysis of either scenario solely on ethical considerations, the discussion

“If you're going to attract the type of talent that you want in an organization, then your motivation cannot only be bottom line profit.”

emphasized the desirability for courageous directors to frame ethical issues in terms of long-term profit maximization. In addition, the participants' general emphasis on understanding the business plan and soft factors supporting the environmental proposal (especially when compared to the flat rejection of the alcohol proposal) underscored ESG's evolution in recent years from radical profit rejector to potential profit generator. One participant noted that in a recent survey of over 400 asset managers throughout Canada, Europe and the US, 67 percent of respondents (Canada – 73 percent; Europe – 85 percent; and US – 49 percent) said they currently use ESG principles as part of their investment approach and decision making.²

But when, if ever, should directors step out from the shadow of long-term profit maximization? Should the board ever act purely on social considerations? If so, who should decide how the company acts?

THE “COURAGEOUS” EXAMPLE OF KENNETH FRAZIER

To investigate these questions, participants discussed from a corporate governance perspective the considerations surrounding the decision by Kenneth Frazier, CEO of multibillion-dollar pharmaceutical company Merck and an African-American, to resign from US President Donald J. Trump's American Manufacturing Council in August 2017 and publicly explain that his reason for doing so was in protest to Trump's response to the racially driven events in Charlottesville, Virginia, days before.³ Frazier's decision was hailed by various commentators as “courageous” (*Fortune* magazine⁴), “brave” (the *New York Times*⁵ and CNBC⁶) and even “heroic” (also *Fortune* magazine⁷).

² RBC Global Asset Management, *Responsible Investing: The Evolution of Ownership*, (Toronto, RBC Global Asset Management, October 2017), www.rbcgam.com/corporate-governance-and-responsible-investment/esg.html

³ See David Gelles, “C.E.O.s React After Trump Attacks Merck Chief,” *New York Times*, August 14, 2017, www.nytimes.com/2017/08/14/business/merck-trump-ceos.html

⁴ David M. Mayer, “Merck's Ken Frazier Just Gave Other CEOs a Blueprint for Standing Up to Trump,” *Fortune*, August 14, 2017, www.fortune.com/2017/08/14/kenneth-frazier-merck-ceo-donald-trump-charlottesville

⁵ Andrew Ross Sorkin, “Outraged in Private, Many C.E.O.s Fear the Wrath of the President,” *New York Times*, August 14, 2017, www.nytimes.com/2017/08/14/business/dealbook/merck-trump-charlottesville-ceos.html

⁶ Bill George, “CEOs have to take a stand, says former Medtronic CEO,” *CNBC.com*, August 15, 2017, www.cnbc.com/2017/08/15/expect-more-ceos-to-speak-out-on-vital-issues-risking-the-wrath-of-the-trump-commentary.html

⁷ Jeffrey Sonnenfeld, “Ken Frazier: The Strongest Man in the World,” *Fortune*, August 15, 2017, www.fortune.com/2017/08/15/merck-ceo-ken-frazier/

Nearly all participants agreed that the potential for retaliation against Merck by the Trump administration and the media attention that Frazier's resignation would attract would thus elevate the matter from a CEO's personal act of principle to a company issue. Good corporate governance, most agreed, required Frazier to seek his board's input prior to taking the action he proposed. Participants identified a number of perspectives through which the Merck board could have advised on the issue. Some argued that the concept of "long-term profit maximization" may be so malleable that nearly any action can be justified under its cover—including the action Frazier took. One participant with a background in studying and advising on corporate governance practices observed:

"Corporate governance exists at the intersection of law, politics and finance. In some periods, putting governance into a purely financial frame is a very good way of handling the political threat because it looks like you're simply fulfilling your fiduciary duty to your investors rather than expressing your own views."

Others, noting the growing trend of public companies being asked to take the lead in addressing some of society's most difficult problems,⁸ suggested that companies

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⁸ See David Gelles, "The Moral Voice of Corporate America," *New York Times*, August 22, 2017, <https://www.nytimes.com/2017/08/19/business/moral-voice-ceos.html>



must, in the interest of attracting capital, remain flexible and refrain from using corporate governance to withstand evolving societal norms.

Finally, participants discussed the extent to which governments are justified in “putting their thumb on the scale” to encourage companies to be good corporate citizens. Nearly all participants agreed that governments are increasingly engaged in such activity. Debate ensued, however, as to the appropriate governmental approach. Some participants observed that even the simple threat of regulation can influence corporate behavior. Many others were in favor of “comply or explain” mandates, which, as the term suggests, require companies to either comply with a mandate or explain why the company chooses not to comply.

Some European participants, however, strongly preferred a code that clearly outlines corporate objectives, arguing that a clear code establishes actionable consequences in the case of non-compliance, which in turn promotes quick and definitive changes in corporate behavior. Mandatory stakeholder directors—whether representing labor, government or ESG—are another route to introducing considerations other than financial maximization into the governance process. For example, German “co-determination” legislation mandates that half of the Supervisory Board must be elected by employee interests. However, many at the session questioned the effectiveness of stakeholder directors, with one participant familiar with the German system observing that co-determination can lead to “protectionist decisions in favor of employees” and repress merger and acquisitions (M&A) and outsourcing activity.

Participants also noted that lenders and private equity firms can act as external controls, as they may not be inclined to invest in corporations that have significant governance, compliance, or risk management shortcomings.



Stephanie Bertels – Companies need to think about long term strategy, not just quarterly returns

Founder of the Embedding Project on why sustainability is important for corporate governance

Toward the end of 2015, leaders representing more than 200 nations approved a set of goals to transform the world. The Sustainable Development Goals (SDGs) aimed to tackle issues such as poverty, education, hunger, and climate change. It was agreed at the time – and remains the case – that for these goals to be achieved, everyone will have to play a role; that “everyone” includes governments, non-governmental organizations, and the private sector.

Stephanie Bertels, the director of the Centre for Corporate Governance and Sustainability at Simon Fraser University’s Beedie School of Business, founded the Embedding Project as a community of practitioners and researchers working together to help companies include environmental and social factors into their operations and decision making.

“The partner companies come to us with their needs – what they’re grappling with – and then using rigorous research methods we help support their understanding of those issues,” Bertels said. The Embedding Project team then helps organizations to re-determine their core strategies with their new goals in mind.

“By that I mean, what would your core strategy look like if you took seriously the idea that you, as a company, need to meet and help contribute to strong social foundations, and that you need to adhere to a set of planetary boundaries?” explains Bertels, a two-time participant of the *Salzburg Global Forum on Corporate Governance*. The tools created by the community assist the company in deciding what their thinking is around a social or environmental



“As fiduciaries of a company, you need to be thinking about not just the quarterly returns, but the longer-term strategy, the survival and thriving of the organization. Understanding societal expectations and how environmental constraints are going to shape that strategy is completely crucial.”

Stephanie Bertels

issue, and what kind of commitments the company will need to adhere to in order to reach their long term goals.

While big companies have often taken part in philanthropic efforts in one way or another, the concept of corporate social responsibility first started to take form in the 1950s, with companies beginning to address the social

issues around them. Since the early 2000s, the movement has grown into a global phenomenon, as consumers and jobseekers (especially “millennials”) increasingly push for companies to take steps toward more ethical behavior. Sustainability’s place in today’s corporate governance is “pretty fundamental,” according to Bertels.

“As fiduciaries of a company, you need to be thinking about not just the quarterly returns, but the longer-term strategy, the survival and thriving of the organization. Understanding societal expectations and how environmental constraints are going to shape that strategy is completely crucial.”

According to Bertels, the environmental constraints on business have become increasingly clear in the recent years. Issues such as climate change present both challenges and opportunities – and boards are starting to understand that they have to be aware how these issues might impact their business.

“It’s hard in this day and age to manage a company, direct, oversee, provide a strategic oversight to an organization without asking questions about – and expecting good quality disclosure about – the risks and opportunities of social and environmental issues.”

Bharat Doshi – Be agile and flexible, but remain steadfast in your values

Chairman of Mahindra Intertrade discusses regulatory economic shackles and corporate governance in India pre and post liberalization and his positive memories of Salzburg Global

Having initially worked in a period of strict government economic regulation before experiencing the freedom of competitive markets, Bharat Doshi, chairman of Mahindra Intertrade, has witnessed freedom for business and corporate governance develop in India through changing times. “Life is all about awareness, anticipation and agility,” says Doshi.

Doshi’s résumé reveals the extent of experience he has amassed and the recognition he has received along the way. Doshi worked for over 40 years for the Mahindra Group, reputed for its high standards of ethics and values, engaged in the manufacture and provision of products and services including automobiles, farm tractors, IT services, financial services, and holiday timeshare resorts. He served as the executive director and group chief financial

officer of Mahindra & Mahindra Limited, the parent company, for 21 years, and one year as president of the Bombay Chamber of Commerce and Industry. In 2016, he was nominated by the government of India as a director on the central board of the Reserve Bank of India.

In the first 18 years of Doshi’s career, the government in India had a large control over the industrial environment. Licenses were not only needed for the location of the company but were also required to specify how much of a product would be produced and what kind of product it would be.

Doshi explains: “Somebody in the government would do supply and demand analysis and would look at how many players are in the field and decide, ‘Okay, you’re a car company, but



you can only manufacture 4-Wheel Drive Utility Vehicles, or you can manufacture only trucks, and you will do no more than 20,000 vehicles.’ This was often described as ‘License Raj’.”

For Doshi and others, grabbing a briefcase and taking a trip to Delhi to obtain approval for business plans was a frequent occurrence. This continued even in the 1980s when regulations were relaxed for minimum economic size and for the production of exports. In 1991, however, significant economic reforms were launched in India. Industrial licensing was abolished and rules on concentration of economic power were relaxed, thus “liberalizing the whole economic scenario.”

“This was a major change and thereafter we were free to operate, collaborate and proceed with plans that made economic sense,” says Doshi.

From a corporate governance perspective, during the strict licensing period pre-1991,

some industrial corporations demonstrated undesirable skills to “manage” the government, according to Doshi. This changed completely in the competitive markets post-liberalization and benefitted companies like the Mahindra Group which believed in its core values. He added that India now, despite the competitive market environment, has sufficient labor laws and sufficient mechanisms to encourage social responsibility. For example, the amended Company Law has a new clause on corporate social responsibility, which came into effect in 2014, requiring companies in India to spend at least two percent of their profits on social development monitored under the principle of “comply or explain.” The law has been criticized by some but spending on social and environmental causes by the private sector did increase in the two years after its introduction.

In addition to this measure, there are also requirements in place for 50 percent of the company board to be independent; if the

chairman is independent, a third will suffice. Doshi sees this measure as a good thing and a sign that the business culture is becoming more transparent. “I believe getting different and external viewpoints on the table improves governance,” says Doshi. On the subject of increase in the level of disclosures in annual reports, Doshi comments that the requirement of disclosures leads to discussion and therefore a conversation, which by itself has its merits. He however cautions against voluminous disclosures, which become “weapons of mass distraction” and may be undesirable.

To stay competitive in a global market, a business director has to adapt with the times and have the courage to change from that with which they are familiar. While it is important to refine practices, Doshi says it is important for professionals to know their core values – values which they won’t give up under any circumstances.

“I learnt in my career that you should be agile, you should be flexible, but your set of values are like the North Star: They should remain steadfast,” says Doshi.

Many participants at this year’s meeting of the *Salzburg Global Forum on Corporate Governance* were making their first trip to Schloss Leopoldskron. Doshi, on the other hand, was retracing his steps and following a path trodden twice before.

Doshi had a “wonderful experience” in 2000 as a participant of *Asian Economies: Regional and Global Relationship*. He recalls fondly, “I still have a few friends from that group of 30 with whom I am in regular touch with, and that bond and sharing memories also makes a difference.”

In 2015, he made his second visit, attending the first session of the Salzburg Global Forum on Corporate Governance. What makes him keep coming back?

“Salzburg Global Seminar is where your mind is free from your day-to-day world and you are able to concentrate your thoughts on a defined topic; you are able to understand and appreciate global practices; and, above all, you are able to evolve in your own mind the principles and the theory behind the topic you are discussing.”



The Role of Shareholders in Corporate Governance

On what issues should affirmative shareholder action be required? What should the role of the controlling shareholder be?

A significant trend in corporate governance is the emergence of shareholder primacy—the view that shareholder interests should be assigned first priority relative to all other corporate stakeholders. Although there was consensus in the session that European and Asian corporations are generally more stakeholder-oriented than US corporations, participants from all jurisdictions observed that the shareholder engagement mentality is now firmly entrenched among leading global companies. For example, of the top 100 listed companies in the US, 74 made “voluntary” shareholder engagement disclosures in their 2017 proxies.⁹ And of those 74 companies:

- 97 percent provided some detail as to the topics on which they engaged with shareholders (up from 86 percent of the 2016 top 100 companies);
- 93 percent disclosed that they engaged on executive compensation matters, including say-on-pay votes (up from 82 percent of the 2016 top 100 companies); and
- 84 percent disclosed that they engaged on corporate governance generally, including emerging issues (up from 70 percent of the 2016 top 100 companies).¹⁰

Participants were quick to observe that the rise in shareholder engagement is driven, at least in part, by the relatively recent rise of the institutional investor. According to a 2017 survey conducted by PricewaterhouseCoopers (the “PwC Survey”), institutional investors own approximately 70 percent of US public company stock, much of which is held in index funds.¹¹ This concentration of economic power (perhaps unseen since the 1920s) has transformed the governance dynamic. One participant commented: “Now it is a fight between management’s view and the activist’s view for the hearts and minds of the institutional investor.” Moreover, the passive indexing strategy used by institutional investors (in which they cannot easily sell off singular component

⁹ Shearman & Sterling LLP, *15th Annual Survey of the 100 Largest US Public Companies: Corporate Governance & Executive Compensation*, (New York: Shearman & Sterling LLP, 2017), 4, digital.shearman.com/i/889672-2017-corporate-governance-survey

¹⁰ Paula Loop, “Insights from PwC’s 2017 Annual Corporate Directors Survey,” *Harvard Law School Forum on Corporate Governance and Financial Regulation*, October 31, 2017, corpgov.law.harvard.edu/2017/10/31/insights-from-pwcs-2017-annual-corporate-directors-survey/#1b

¹¹ *ibid.*

“Now it is a fight between management’s view and the activist’s view for the hearts and minds of the institutional investor.”



stocks) has led to intense scrutiny on indicators of long-term performance, including corporate governance. As explained by the PwC Survey:

“Many of these [institutional] investors believe that seeking improvements in corporate governance is one of the only levers they have to improve company performance. And these shareholders are exerting their influence with management teams and the board through their governance policies, direct engagement and proxy voting.”¹²

THE INCREASING INFLUENCE OF INSTITUTIONAL INVESTORS

Given the increasing influence of institutional investors, some participants harkened back to the issues presented by Kenneth Frazier’s decision to resign publicly from President Trump’s American Manufacturing Council to ask whether good corporate governance required Merck to consult with some of its shareholders prior to Frazier’s public announcement. Participants rejected out of hand the notion that non-controlling shareholders should be given an active role in this kind of decision making, citing concerns over the loss of agility in times of crisis and the difficulty of prioritizing which shareholders merit consultation on which issues—particularly in widely-held corporations. Moreover, a participant with experience advising institutional investors emphasized that, although ongoing engagement between management (and on occasion certain members of the board) and significant shareholders is important to helpful shareholder relations, institutional investors generally lack sufficient interest (and, in many cases, have not committed the necessary resources) to assume an active role in their portfolio companies’ decision-making processes. Institutional investors instead tend to focus chiefly on two matters:

1. The alignment of pay with performance, and
2. The strength of a company’s corporate governance mechanisms, including board composition.

¹² *ibid.*

A thought-provoking question that arose was how large institutional investors, due to their expansive holdings and sometimes conflicting long-term and short-term interests, should balance the competing incentives on certain matters up for vote. As one participant, who advises multiple companies and boards, remarked, the current dominant model in the US, rooted in securities legislation such as the Williams Act¹³, is therefore “adversarial,” “inefficient” and “unhelpful” by encouraging confrontation between companies and shareholders. “The disclosure rules make it very difficult for companies to give forward information to shareholders, which is what the shareholders really want,” he added. Instead, he explained:

“We came up with a different business model, one in which we positioned ourselves mid-way between the institutional investors and the corporations that are our clients. We don’t work for the shareholders but we want [them] to know us and trust us. We need to deliver their views and their expectations, unfiltered into our clients so that we can then advise the clients how to respond proactively so that they’re not sitting there and suddenly the shareholders are getting angrier and angrier, and suddenly you have an activist or an angry shareholder with a resolution or some other confrontation that puts management on the defensive. Our business model is very much about prevention of conflict.”

THE ROLE OF DIRECTORS IN THE FACE OF CONTROLLING SHAREHOLDERS

Most participants, from all represented jurisdictions, agreed that the task of behaving independently on a controlled company can be quite challenging. However, while some participants expressed reservations about serving on a controlled company board, participants from across represented jurisdictions agreed that a controlled company board can discharge its monitoring responsibilities provided that the independent directors have significant reputations and are not financially dependent on their board service. In addition, a participant working in Hong Kong stressed that when courageous directors frame the monitoring function in the context of risk assessment (as opposed to administrative red tape), then the process can work—particularly in companies that have reached a certain size and that are in a listed environment where there is financial incentive to demonstrate strong governance practices. A suggestion that some of the independent directors be elected and only be removed by non-control shareholders was examined but did not elicit an enthusiastic response.

¹³ Williams Act of 1968,” *Institutional Limited Partners Associations*, accessed January 25, 2018, www.ilpa.org/glossary/williams-act-of-1968/

PROFILE

Katrina Scotto di Carlo – Serving people and profit at the local level

Placemaker co-founder discusses keeping money local and Portland’s decision to divest of all corporate securities

During the third session of the *Salzburg Global Forum on Corporate Governance – The Courageous Director: Can Corporations Better Serve People, Planet, and Profit?* – participants were asked to consider what attributes make a director “courageous.” Katrina Scotto di Carlo, co-founder of Placemaker, a tech platform for independent businesses, says she finds this question “surprisingly difficult” to answer.

Fittingly, Scotto di Carlo considered this question, and others posed to her while sitting in Max Reinhardt’s former office at Schloss Leopoldskron. Reinhardt was a director of a different kind, but one who achieved widespread recognition as a major theater figure of the 20th Century. Scotto di Carlo says the director, in a boardroom sense, also has to help hold many of the pieces together – not of a play, but of a business.

“I really think we’re stepping into some uncertain times and some major instability globally. It’s a time when people will have to stand up from all sectors and be courageous,” she says.

“I do believe corporations have a really important role to play, and the question is whether they’ll play that role.”

Scotto di Carlo, who considered herself somewhat of an outsider at the session, says, “I find that my role in nearly every business meeting is the same here as it is everywhere else, which I didn’t expect. That role is often to be the really weird thinker. I think that the way I come at problems is just really different. As a kid, I would get penalized for it because a lot of teachers



thought I was joking. Nowadays, it is seen as helpful, but my mind is somewhat overly creative. In a business setting, it poses interesting questions.”

Beyond defining what it means to be “courageous”, participants at the third session of the Salzburg Global Forum on Corporate Governance also explored the second half of the session title: “Can Corporations Better Serve People, Planet and Profit?” Much of the focus of the three-day discussion was on the multinational/planet level. But for Scotto di Carlo, this question is just as important at the local/community level.

Scotto di Carlo played an instrumental role in her local community in Portland, Oregon, USA, as a member of the City of Portland’s Socially Responsible Investment Committee. The efforts by her and others led to Portland City Council divesting from all corporate securities in April 2017.

Looking back at why this decision was made, she says: “The city looked at just like the huge commotion that was coming out of this and they said, ‘You know what? This isn’t why we were elected. We were elected to deal with the homeless population. We were elected to deal with the housing situation. We weren’t elected to spend hours and hours and hours on this investment piece, so we’re just going to divest.’”

Each year, the council will review the investment policy and decide whether it should be changed. Scotto di Carlo says, “The biggest fear I have is that that’s not the solution to divesting. That means we only have US Treasuries to invest in, which with Trump is like an unknown. The solution would be that we look at a municipal bank like the Bank of North Dakota or something like this... The City of Portland is not putting anywhere near the amount of resources needed to create that solution currently. When April comes it’s going to be: we killed this vehicle, we didn’t build another one.”

Scotto di Carlo’s believes one of the problems with municipal governments is what they choose to measure as investment. She adds: “To me, a really interesting challenge would be how we measure the overall investment and using investment in the broadest definition possible to understand what it means to invest in community, what municipal government’s role is, and then how that investment compares to Wall Street.”

The Socially Responsible Investment Committee featured six members representing different domains. Scotto di Carlo was selected to capitalize on her expertise of independent businesses. Placemaker, which was established by Scotto di Carlo and her husband in Michael in 2010, was design to help support independent businesses in Portland. Scotto di Carlo describes it as a “loyalty program to the community, not just an individual business.”

Users of the platform can earn and spend points anywhere in their town. Information is stored on their Placemaker card or mobile app. Scotto di Carlo says, “It makes it so that the experience of shopping and eating local is one experience that you share in the community rather than you just going to separate businesses. You feel like you’re going into a solid community where every business is working together.”

The platform was launched as an experiment. Di Carlo concedes she didn’t realize how much work it would be, but other communities have since come on board with networks popping up in Victoria, BC, Canada, and Western Massachusetts and Monadnock, NH, USA. Placemaker seeks community partners such as business associations, municipal governments and economic development people to get networks off the ground. These partners license Placemaker and distribute it to their independent businesses.

Scotto di Carlo says, “A customer on average, if they engage at a Placemaker business, will go to nine other businesses on the network. That’s the sort of return we’re seeing on the data.”

Studies show that local businesses recirculate a greater share of every dollar in their local economy than national chains. One such study, conducted by Civic Economics in Monadnock showed that independent retailers saw a local recirculation of revenue rate of 62 percent, versus 13 percent by national chains.

Commenting on money staying local, Scotto di Carlo says, “That ability for one customer’s experience in an independent business to create community wealth is real, and it’s perhaps one of the most approachable ways that an individual citizen can create community wealth. It’s just shopping, eating local, and providing money for the people that live there – their neighbors.”

Controlling Behavior of Corporate Personnel

What is corporate culture and who defines it? How can a corporation control, measure and mitigate different risks? How should the risk control structure be built? Who should be held accountable and how?

In his “theory of business,” management theorist Peter Drucker defined culture as “assumptions that shape any organization’s behavior, dictate its decisions about what to do and what not to do, and define what the organization considers meaningful results.”¹⁴ Focusing on the effects of corporate culture, a 2015 report published by the Group of Thirty¹⁵ observed:

“A great deal rests on a firm’s culture. Improving and embedding desired conduct and cultural norms is a long-term process that requires a sustained effort. The public can be served and individual firms can prosper in the long term only if they are trusted entities operating for the broader benefit and with the support of their customers and society at large.”¹⁶

Given the importance of culture in the modern corporation, perhaps two of the most pressing issues facing directors today are:

1. How can directors ensure that the tone at the top is disseminated throughout a company?
2. How can directors effectively measure a company’s culture?

“The public can be served and individual firms can prosper in the long term only if they are trusted entities operating for the broader benefit and with the support of their customers and society at large.”

¹⁴ Peter F. Drucker, “Theory of Business,” *Harvard Business Review*, September/October 1994, www.hbr.org/1994/09/the-theory-of-the-business

¹⁵ “The Group of Thirty, established in 1978, is a private, nonprofit, international body composed of very senior representatives of the private and public sectors and academia. It aims to deepen understanding of international economic and financial issues, and to explore the international repercussions of decisions taken in the public and private sectors.” “About the Group of Thirty,” Group of Thirty, updated 2018, www.group30.org/about

¹⁶ Group of Thirty, *Banking Conduct and Culture: A Sustained and Comprehensive Reform*, (Washington, D.C.: Group of Thirty, 2015), www.group30.org/images/uploads/publications/G30_BankingConductandCulture.pdf



TOP-DOWN DISSEMINATION OF CULTURE

Participants agreed that senior management and the board, as the cornerstones of a company's value system, must clearly define and communicate a company's culture—through both words and deeds. Although participants recognized that there is no one-size-fits-all approach to culture, consensus emerged that if employees perceive that managers and directors will allow ends to justify questionable means, then that company will have effectively lost all trust and with it sustainability.

After culture has been defined and demonstrated at the top, its dissemination throughout a company requires a variety of factors to work together. Participants suggested that these factors can include:

- Annual cultural assessments that ask employees to certify that they understand the company's culture, as determined by upper management and the board;
- Mentor programs that encourage employees to discuss workplace issues;
- Formal (public awards) and informal (private and spontaneous) recognition of exemplary behavior;
- Adoption of a confidential hotline and/or retention of an ombudsman to promote retaliation-free reporting of workplace issues;
- Dissemination of anecdotes that epitomize the corporate's desired culture;
- Motivated human resources employees who actively consider corporate culture in the hiring process; and
- Cultivation of thought leadership on corporate culture through engagement with academic institutions and peer firms.

Compensation, it was agreed, is also an important factor to the dissemination of corporate culture. As one participant noted: "How employees are rewarded speaks volumes to their colleagues in terms of corporate values and culture." However, although it was suggested in Salzburg that at least one large financial institution has begun explicitly to tie compliance with pay, participants generally recognized that penalizing through pay the failure to meet compliance and risk management standards does not necessarily promote a culture of compliance because financial compensation is generally kept confidential. Many participants suggested that promotions, growth opportunities and other nonfinancial rewards can play an important role in the dissemination of culture.

“How employees are rewarded speaks volumes to their colleagues in terms of corporate values and culture.”

MEASURING CULTURE

Boards have a number of indicators from which they can piece together a snapshot of a company's culture. Participants suggested that these indicators can include:

- Information gathered from cultural assessment forms. One participant noted that corporations might consider using a third party, such as a non-governmental organization (NGO), to collect and aggregate data from the assessment forms to ensure that the information gathering process is efficient, accurate and retaliation-free—particularly important factors for global companies with employees in developing economies.
- The frequency of reported infractions—regardless of magnitude—and the amount of time between the incident date and the report date.
- Perceptions of the company held by unaffiliated third parties, including journalists and activist organizations.
- The frequency and general sense of security with which employees escalate problems through hotlines. It should be noted that robust use of hotlines might indicate low trust between supervisors and employees as opposed to a healthy culture of compliance. In addition, boards should not presuppose cultural norms across jurisdictions with respect to hotline use. From the Asian perspective, for example, use of hotlines is firmly entrenched but reports generally involve co-worker complaints better-suited for human resources departments.
- Regular executive sessions that allow for free discussion of the strengths and weaknesses of the corporate structure.

There is an inherent tension between the control and business functions in a company. On the one hand, it was observed, unless the business persons consider control persons to be “part of the team,” control persons may be unable to obtain sufficient access and information to perform their control duties. On the other hand, unless control persons are assured a certain degree of independence from the business (e.g., their status and compensation can be controlled exclusively by those in the control group), they may lack the independence necessary to report bad behavior. Recognizing that empowered and engaged control people are paramount to the effectiveness of a company's risk functions, some participants suggested that companies should increase control person compensation. A question that arose was whether personal liability on compliance and internal audit teams would elicit improved levels of engagement by such teams.

In addition, participants discussed the interaction between culture and liability exposure under various legal regimes around the world. Some participants suggested that the general litigiousness in the US and the intense factual scrutiny

that occurs in shareholder litigation under the laws of certain US jurisdictions (including the state of Delaware) sufficiently encourage US corporates to ensure that their behavior remains proper. Others suggested that reputational damage to US directors significantly deters corporate malfeasance. However, some participants submitted that the US system fails to motivate companies to adopt a culture of compliance ex ante due to the general resistance in the US to impose personal liability on directors and the exculpation of directors (under Delaware law) with respect to the duty of care.

In contrast to the US system, the UK and German systems impose personal civil liability on directors in the event of various failures in board oversight (e.g., failure to avoid certain conflicts of interest, failure to maintain corporate records, and failure to “promote success of the company,” among others). In addition, management directors of German companies face civil and criminal liability in a number of instances, including making intentionally false statements to creditors, false accounting, and failure to file for insolvency in certain circumstances. Some participants agreed that these clearly-defined liability risks appear to promote a culture of compliance among UK and German companies; however, many participants also expressed concern that the personal liability imposed in the UK and Germany may also promote corporate conservatism and deter top talent from serving on boards in those jurisdictions.



CASE STUDY: VOLKSWAGEN

In January 2017, Volkswagen (VW) pled guilty to three criminal felony counts and, to date, the company has agreed to pay nearly \$17 billion in civil penalties as a result of its long-running scheme to beat emissions tests in the US.¹⁷ In addition, six Volkswagen executives and employees face criminal indictments for their role in the scandal. In August 2017, a VW engineer was sentenced to 40 months in prison.

The scheme began in 2006 when VW was battling Toyota and General Motors for the top position in the global car market. Volkswagen CEO Martin Winterkorn, known for his high ambition and authoritarian leadership style, had his sights set on raising VW's market share in the US market to become the largest car maker in the world by 2016. Under Winterkorn's leadership, Volkswagen had a saying: "Geht nicht, gibt's nicht." Roughly translated, that means, "Impossible doesn't exist." To VW's engineers, the message was clear: failure means losing your job.

Court records suggest that an engineer, or maybe a group of them, were given the target of designing a diesel engine that would hit performance and price targets while still meeting US emissions standards. Developing the engine was apparently critical to VW's plans to become the world's largest carmaker, but the engineers could not solve the emissions problem. Faced with the need to begin selling diesel powered cars in the US quickly, the engineers installed software – also known as the "defeat device" – on the new engine whose purpose was to defeat the US emissions tests. Facts surrounding the scandal continue to emerge, but it is clear that senior management largely ignored a whistleblower who suggested that the engine's design presented concerns and that VW employees shredded documents linked to the defeat device after internal counsel apparently signaled that government officials wanted to review them.

One breakout group in Salzburg discussed the factors that contributed to the VW scandal and the changes the company should make to catch and prevent illegal behavior going forward.

Participants first identified the issues at VW as product of culture in which failure to meet senior management-determined goals was unacceptable ("Geht nicht, gibt's nicht"). Some participants suggested that leaders who ruled by fear and the strategic initiative to outpace the rest of the industry invariably led lower-level employees to use whatever

means necessary to meet targets. Recognizing that demanding leadership and high aspirations are hallmarks of many global corporations, participants turned to the oversight responsibilities of the management and supervisory boards. Many suggested that the boards' failure to recognize the amount of pressure lower-level employees were under and to maintain thorough oversight over those employees was a key contributing factor to VW's decade-long pattern of illegal behavior. As articulated by a participant, "high-power incentives require high-power monitoring."

¹⁷ "Volkswagen AG Agree to Plead Guilty and Pay \$4.3 Billion in Criminal and Civil Penalties; Six Volkswagen Executives and Employees are Indicated in Connection with Conspiracy to Cheat U.S. Emissions Tests," US Department of Justice press release, January 11, 2017, <https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six>

Some asked whether the board was expected to have sufficient technical knowledge to catch the defeat device themselves. In response, one participant suggested that at issue was not the directors' own technical acumen, but rather their responsibility to develop and maintain strong lines of communication with the business and engineering teams and to create an independent compliance monitoring structure.

Debate centered on the root cause of the board's unwillingness to develop appropriate monitoring controls. A participant with experience in German companies blamed co-determination (the German dual-tiered board system that requires board representation from labor), arguing that the employee constituency of the Supervisory Board blinded VW to the potential risks of the defeat

device and to the need for a strong compliance monitoring system. Others however disagreed that co-determination was at fault, observing that companies with single-tier boards (e.g., Wells Fargo and General Motors) have suffered scandals similar to Volkswagen's (see page 35 for the Wells Fargo case study). Citing allegations of widespread falsification of emissions-related statistics in the automotive industry, other participants suggested that collective action concerns (i.e., the utility and cost of trying to address systemic failures) may have deterred the board from scrutinizing the engineering processes. One participant also suggested that the VW board, comprised predominately of German nationals, simply failed to appreciate the enhanced risk in the US (and particularly in California) of failing to comply with emissions regulations.

In terms of potential improvements VW can make going forward, participants identified the following mechanisms:

- Circulation of a clear zero-tolerance policy regarding illegal behavior that receives constant and well-publicized support from the boards and upper management.
- Enactment of a whistleblower policy that ensures retaliation-free reporting and that the control functions in the corporation have unfettered access to the board or a key member of it.
- Appointment of a chief risk officer tasked to lead teams that could gain information from management and employees. The risk officer could also be tasked with heading independent reviews of new products (similar to the third-party review in the financial industry used to verify new derivative products coming to market).

- Election or appointment of board members with greater diversity—particularly in terms of nationality.

In addition, participants also stressed the importance of control groups (e.g., in-house lawyers, a compliance team, and internal auditors) as second and third lines of defense in terms of compliance. Do control groups have clear reporting lines within them, eventuating in a report to the board? To what degree are compensation, promotion, hiring and firing of control group members decided by the control group (as opposed to the business teams)? Do those working in control groups appreciate the amount of information and degree of detail they are expected to report? Do they understand that their input is valued? Participants widely agreed that these considerations are paramount to ensuring that a company's control functions operate properly.

PROFILE

*Bob Malone – “I have never worked on a crisis where the fundamental problem wasn’t culture”***Former BP America president on the impact of corporate culture in board-employee dynamics**

Robert “Bob” Malone, former president of BP America, is no stranger to crisis management and risk assessment. His work has earned him the title “Mr. Fix It” in various sectors of the British and American energy industries, especially at the oil giant BP where he worked for 35 years. Now retired from the energy industry, he currently serves as president and chief executive officer of First Sonora Bancshares.

Taking the helm during one of BP America’s most turbulent periods, shortly after becoming the company’s president in 2006, Malone brought in US district judge Stanley Sporkin as an ombudsman so employees had someone to go to on issues of health and safety. He says, “The learning that I took from that is not that they might not trust you but they want to have somewhere safe to bring their issues. What I took away from it, and have applied ever since, is somewhere around me is going to be a safe place to bring issues and concerns.”

In Malone’s view, social good comes from the heart. He disagrees with the idea that there’s no space in the boardroom for values. Expanding on this point, he says, “When I was young we called it leading from the heart. Now they call it ‘value-based leadership.’ It’s the same thing. If you understand what I believe in, what are the guidelines that you will not cross because this is my value system – and you agree with that value system – you’re going to follow me, aren’t you? Guess what? If I know you’re following, guess who I’ll follow? I’ll follow you. That’s how teams get made.”

Malone says he takes his values with him “every day in that boardroom” and he makes



“A courageous director has the courage to say, ‘I’m listening to all of you, and I don’t agree. That is wrong and here is why.’”

Bob Malone

his decisions through a lens of these values, a lens of social good. If these values are shared, a values-based culture will develop.

“You don’t have to say much,” Malone says. “First of all, your employees need to believe you. If your employees believe you, you’ve now got – in the case of BP America – 50,000 ambassadors out

there talking about change, or whatever was our value-based system.”

He adds, “The mistake a lot of people make is they take it and make it a public note instead of you earning it. The politicians or the people outside of your company will see it if you live those values.”

One topic that arose during the session centered on accountability. When an incident occurs, does responsibility lie with management or directors? Malone says, “The shareholders elect directors. Directors are elected to run their company. You then delegate that authority to management to do that on a full-time basis within your policies and procedures. If someone violates a policy, that’s management. If something goes wrong and a procedure or policy is not in place, then the board owns it.”

Malone concedes it can be blurry at times, with responsibility lying with both management and the board. He adds, “Too many times they want to say, ‘The board should have known.’ ... [Boards] are given the authority to run the company and they in turn hire management, and then tell them, ‘Here are your parameters.’ If it is a violation of that parameter, that rests squarely with management.”

For Malone, the lesson he took from the turbulent period was one of corporate culture, arguing that more often than not culture is the reason behind crises. He supports this by assessing that, to set a good governance record, a company needs to begin by looking at their culture and how governance should guide employee behavior.

“I have never worked on a crisis where the fundamental problem wasn’t culture. I start there,” says Malone. Reflecting on the propane trading scandal which took place between 2003 and 2004, he says, “What caused it? A culture of profit. All the guidelines... Everything was written,

they knew what to do and not do, and they still did it because the culture said making money is more important.”

Despite his oil industry background, Malone is a firm supporter of energy diversity and alternative sources as tools for ensuring energy security and a sustainable future, seeing them as essential parts of corporate environmental and social good initiatives. Alongside former BP CEO Lord John Browne, in his time as president of BP America, Malone advocated the “Beyond Petroleum” brand through investment and development into alternative energy sources. These efforts were shut down by the next CEO, Tony Hayward, soon after Browne’s and Malone’s respective departures in 2007 and 2009. During a 2008 lecture at MIT, Malone questioned previous US energy policies, arguing American administrations and corporations have a responsibility to do better than they have in the past, as there is a necessity for low-carbon-emitting and renewable energy to ensure a sustainable future.

Malone argues that a courageous director is one that breaks the boardroom’s element of collegiality. “To me, when I think of a courageous director, it’s someone who is confident and has strong enough values to say, ‘I am an independent director. Independent. Independent of management and independent of my colleagues, and I have been put on this board to have an independent voice in the boardroom.’ It doesn’t mean that everybody agrees with me and it doesn’t mean they do it, but a courageous director has the courage to say, ‘I’m listening to all of you, and I don’t agree. That is wrong and here is why.’ That’s a courageous director.”

The Board: A Few Special Problems

How should the board of a complex, global corporation be organized? What are the guidelines for smaller companies?

Board composition varies around the world, but, regardless of locale, who serves on the board dramatically affects the decisions made at that level. This ensures that the organization and membership of boards is and will remain a “hot button” for shareholders and regulators. For example, as part of its “National Boardroom Accountability Project Campaign—Version 2.0” announced in September 2017, the New York City Comptroller sent a letter to the nominating and governance committee chairs of 151 portfolio companies held by the New York City Pension Funds, requesting board engagement regarding the director refreshment process and disclosure of a director qualification matrix that identifies directors’ relevant skills and experience and their gender and race/ethnicity. ¹⁸

Participants across all represented geographies identified corporations’ increasing focus on director diversity as a trend that most believed improves both social equality and corporate governance. In addition to focusing on gender diversity on the board, a number of participants also agreed that diversity of nationality and experience injects different and valuable perspectives to board functions—particularly as businesses continue to expand globally.

As it is understood differently in different jurisdictions, participants also discussed the concept of director independence. But who qualifies as an “independent” director? Does it require independence from management, from major shareholders, or something else? And whose interests should independent directors serve? Is a long-time friend of the CEO independent? Does long-time service on a board diminish independence? A number of participants observed that, outside the US, granting substantial amounts of stock options or other equity-based compensation to directors is considered inconsistent with director independence because it could cause directors to focus on short-term stock gains.

There was consensus that independent directors can indeed be an effective tool in fulfilling the board’s oversight duties. However, as articulated by one US director, “‘tick-the-box’ independence is an extremely poor surrogate for what we really care about, which is having a director who is willing to express a view that is in opposition to management when appropriate.” Many participants agreed that an effective independent director is one who is “energetic, skeptical and curious” and who creates “constructive tension” between other board members on key

“‘Tick-the-box’ independence is an extremely poor surrogate for what we really care about, which is having a director who is willing to express a view that is in opposition to management when appropriate.”

¹⁸ “Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign – Version 2.0,” NYC Office of the Comptroller press release, September 2017, comptroller.nyc.gov/services/financial-matters/boardroom-accountability-project/boardroom-accountability-project-2-0

issues. Still, citing the practice by UK regulators of interviewing directors of large financial institutions to verify their understanding of the highly regulated aspects of the industry, some participants questioned whether too many independent directors lack sufficient knowledge of a corporation's business and industry to be effective monitors and thus do not provide the help in making strategic decisions that are crucial to the corporation's wellbeing.

Several participants noted that the concept of independent directors is generally much less utilized in Europe and Asia than in the US and that the concept tends to change among jurisdictions and, in some cases, even among regulators. Even when corporations in developing economies employ nominally independent directors on the board, those directors frequently are elected by majority shareholders, often founder families, and will rarely oppose them. However, a participant with experience advising institutional investors in Europe noted that such institutions strongly prefer that independent directors comprise at least half of the board and serve, at a minimum, as chairs of the audit, compliance, and risk committees.



PROFILE

*Melissa Obegi – “You have to influence by persuasion”***Asia General Counsel for Bain Capital discusses how to effectively lead and change companies**

Melissa Obegi, Asia general counsel for Bain Capital, has attended all three sessions of the *Salzburg Global Forum on Corporate Governance*, and since 2016, she has sat on the Forum’s advisory committee. Based in Hong Kong, Obegi is responsible for transactional, portfolio, and operational legal matters and risk management for Bain Capital’s Private Equity and Credit businesses in the Asia Pacific region. Her decision to return to Salzburg each year “feels like it makes sense,” according to Obegi. She says, “It’s a great group of people in both the mix of repeat visitors, plus new attendees. It’s a great chance to step out of our everyday jobs and try to bring a higher level of thinking to it.”



Obegi, who was previously a managing director and Asia regional counsel for Oaktree Capital in Hong Kong, says she was looking forward to attend the latest session to reflect on several case studies. Drawing on their diverse business, legal and academic backgrounds, Obegi and her fellow participants reviewed Volkswagen’s emissions scandal, Wells Fargo’s fake accounts, and the Google anti-diversity memo.

Over three days, Obegi and her fellow participants had the opportunity to exchange ideas with others who had a similar interest in corporate governance but had different perspectives from which they could all learn. She says, “What’s interesting is the chance to really cross-fertilize different ideas with the view to trying to bring new levels and layers of understanding to common issues and themes that we all deal with in our professional lives.”

In her role as Asia general counsel, one of the main ways in which Obegi can affect corporate culture and create change in the companies

in which Bain Capital invests is by engaging with each company’s board directors on risk management topics. How to effectively disseminate appropriate risk management techniques across companies operating in different jurisdictions, or where different languages are spoken, was a key concern for her at the Forum this year. Some of Bain Capital’s companies have operations in multiple countries in Asia. The 2017 session – *The Courageous Director: Can Corporations Better Serve People, Planet, and Profit?* – offered an opportunity to take learnings from practices in countries such as Germany and the US and think about how it could be applied and adapted for an Asian setting.

Some of the conversations at the three years of the Forum that have captured Obegi’s attention so far have focused on how to balance social issues and/or ethical issues that have a wider set of constituencies with the need for financial return. She asks: “How do you develop a compelling vocabulary around these issues? How do you present them in a way that will generate

greater consensus and interest in moving these things forward? We operate in a world where you have to influence by persuasion.”

Independence of directors also concerns Obegi: “I think it’s probably a common issue everywhere, which is: how do you define independence? What is the value of an independent director? People may be technically independent but they may not be actually a very independent voice.”

In Salzburg, participants were reminded courageous directors have “unprecedented

opportunities to serve as global influencers, to remain connected to their communities and popular opinion.” In Obegi’s mind, a courageous director has to be willing to ask tough questions while raising and addressing issues that have remained previously undiscussed. Obegi says, “It’s really bringing in the different voice. I think without contrasting and competing diversity of viewpoints, it’s hard to get to the best answer if you just have one point of view. [A courageous director is about] really being a counterpoint and creating conversations that wouldn’t take place otherwise.”

INTERVIEW

Julie Richardson – A smooth and functioning governance structure requires openness and respect

UBS AG board member discusses what it takes to be courageous director and what good corporate governance entails

An expert in public communication as a corporate governance tool, newly assigned board member of UBS AG Julie Richardson has had a remarkable career in corporate communication. From AOL Time Warner to MGM and Comcast, Richardson understands how essential good communication is for success in the corporate world.

What communication practices are essential for good corporate governance?

To have a smooth and functioning governance structure, there has to be openness and respect. Once you have those things, there isn’t an issue that is “too sensitive” to discuss and really get to the bottom of. I find that in-person discussions are really, really valuable. You hear people talk about Skype and all of the technology – do we really need to be there in person? I think there’s nothing like shutting the door and having people around that table that care deeply about the company [and] conduct an open dialogue in terms of the key issues.



What conduct or result is executive compensation designed to incentivize and what are effective and appropriate designs to achieve that?

I think that first and foremost compensation programs are designed to make sure that everyone is focused on maximizing the value of the company. In most boardrooms today, over half of the compensation of the chief executive officer and the senior management team is

equity-based. It's long-term in terms of divesting. What we're trying to create is long-term value creation. At the same time, more and more boards are layering in subjective factors such as "Does this person embody the culture? Does this person embody the ethics that we're trying to promote?" Compensation is a vehicle where you can deliver a message – a positive or a negative one on those matters as well.

What are some good corporate governance practices that make greater long-term value?

I think that clearly long-term value is what everyone is seeking, but your shareholders require as much predictability as possible and the less volatility as possible. I think the most important short-term attribute is making sure that you are communicating clearly and effectively to your shareholders so that they are not surprised. There's nothing shareholders hate more than an unpleasant surprise. A lot of it is communicating clearly and then making sure that you have got the levers to pull to deliver what you tell people you are going to deliver.

What makes a courageous director?

What makes a courageous – and effective – director is a collegial attitude, a respectful attitude, but also a view that if you see something that is wrong, you have to voice your opinion. If you see something that's wrong, there are points in time where you have to dig your heels in, and say "We cannot proceed," even though others on the board might not be there, the management team might not be there. To be effective, it is a combination of being seen as the ultimate team member so that when you have to speak up and you have to say, "Wait, we can't do this. Stop," you have the respect of your colleagues and you're able to carry the day.

What are the most important things you have learned in your career?

The first lesson would be that it is all about the people. You can have the best business plan

and the best market, and if you don't have the right people and the right morals and ethics, it can go wrong very, very quickly. Being able to choose the right people and being able to retain the right people is really crucial to success. Good people tend to hire other good people, whereas mediocre or poor performers will seek out people in that category.

The second thing I would say is you have to stay ahead of the trends in front of us. When you look 15 years ago it was all about going digital and the online marketplace. When you look at 2017, it's all about machine-learning and artificial intelligence. I think that if you're not spending at least a decent chunk of your time thinking in a forward-looking manner, you have a serious risk of being left behind.

I would say the third thing would be how you treat people is incredibly important. I think that's the way you develop relationships and mutual respect. I also have learned that it is a very, very small world, and if you don't treat people the way you'd like to be treated yourself, it will come back and haunt you. Whether you're dealing with the CEO or whether you're dealing with the secretary or the person cleaning the washroom – everyone deserves respect.

What will you take away from this session?

I think that the session has been a great experience because it's rare we deal every day with corporate governance but to be able to step out of our daily lives and go really deep into corporate governance for three days is a rare opportunity. I think we've covered almost every aspect of corporate governance and [had] discussions with participants with such different backgrounds. I feel like I'm going to go back home and be a more productive and aware director.

[This transcript has been edited for length and clarity.]

CASE STUDY: WELLS FARGO

On September 8, 2016, the US Consumer Financial Protection Bureau (CFPB) announced that it had fined Wells Fargo Bank \$100 million, as part of a larger settlement of \$185 million that included the Office of the Controller of the Currency and the Los Angeles City Attorney, “for the widespread illegal practice of secretly opening unauthorized deposit and credit card accounts.”

As recounted in detail in the CFPB’s Consent Order, Wells Fargo’s sales targets and incentive

compensation were found to have induced employees, among other things, to covertly open accounts and transfer funds without customer consent. What followed immediately for Wells Fargo was a maelstrom of bad publicity, Congressional inquiries, additional investigations, a number of shareholder and employee lawsuits, and reputational damage. Since the CFPB settlement, additional violations of customer trust have been discovered by the bank or alleged by outsiders, and the bank’s reputation remains damaged.

Participants immediately characterized the abuses at Wells Fargo as products of aggressive sales culture that went unchecked by the board. The root causes of the board’s monitoring failure (i.e., failure to recognize the amount of pressure low-level employees were under and failure to maintain scrutinized oversight on those employees), participants agreed, rested within Wells Fargo’s corporate structure.

There was no dissenting view that the board’s failures were linked in part to Wells Fargo’s corporate structure. Key structural flaws identified during the discussion were Wells Fargo’s decentralized corporate structure, which placed too much power with subsidiaries, and the company’s practice of having the internal audit conducted at the subsidiary level and reported by management up to the board. The near complete autonomy of departments and the



indirect reporting from auditors, it was agreed, led to weak lines of communication from the business to the board, thus allowing improper incentives and behavior to proliferate.

Participants also agreed that the board's failures were linked to the lack of skepticism demonstrated by directors. When a particular company, suggested participants, significantly outperforms its competitors, "there should be alarm bells" for board members to scrutinize the outsized results. Given that Wells Fargo perpetually outpaced its competitors

in terms of average accounts per household and that senior management's influence was inextricably linked to that gap, all participants agreed that the board should have taken unilateral action to examine the business model and risks associated with the company's sales culture. In other words, the board should have known of the questionable conduct. This is particularly true, participants observed, in light of various whistleblowers and grass roots reports regarding employee misconduct that emerged years before the issue came to a head.

In terms of potential improvements Wells Fargo can make going forward, participants identified the following mechanisms:

- Centralization of the corporate structure—particularly with respect to direct control functions (legal, compliance, and audit), which should have clearly defined reporting channels to the board.
- Adoption of various programs through which directors have the opportunity to speak directly to customers.
- Usage of one-on-one meetings between upper management and all levels of employees.
- Potential clawbacks of director compensation.



Compensation of Management and the Directors

What conduct or result is compensation designed to incentivize?

What are the effective designs for compensating management?

In the US and Western Europe, many have identified compensation structure as a contributing factor to the 2008 financial crisis. Before that, Enron and WorldCom¹⁹ served as stark reminders of the dangers posed by skewed incentives. As a result, executive compensation at public companies around the world is subject to increasing scrutiny from shareholders and regulators. For example, in the coming proxy season in the US, companies will have to disclose the ratio between their CEO's total compensation and that of the median employee of the entire company group globally. Unsurprisingly, the ratio generally has been criticized by the corporates required to disclose it. However, 84 percent of institutional investors surveyed in a recent Institutional Shareholder Services poll indicated that they would analyze the ratio and 63 percent said that they would do both year-to-year comparisons and comparisons to industry sectors.²⁰

Because compensation has become a constant source of media attention, shareholder engagement and regulatory focus in recent years, the necessary task for the courageous director is to understand what works, what is “broken” and what is at stake.

WHAT WORKS?

Participants agreed that although some forms of equity compensation (e.g., short-term vesting options) can encourage excessive risk taking, longer term awards can effectively align executives with the long-term interests of the company and its shareholders. Indeed, many in Salzburg agreed that companies throughout the world would benefit from lengthening vesting periods and adopting limitations on when equity awards can be monetized. Participants from Europe and Asia observed, however, that cultural norms in those jurisdictions limit the level of variable compensation executives can receive—regardless of vesting terms and

¹⁹ In the early 2000s, two massive corporate accounting scandals led to the bankruptcies of the US energy firm Enron and US telecoms company WorldCom. Having significantly gained financially from the inflated values of their companies, a number senior executives were subsequently convicted on several counts including fraud and insider trading. New regulations and legislation on corporate governance and accountability were adopted, including the 2002 Sarbanes–Oxley Act. In 2001, Enron was the largest corporate bankruptcy in US history until WorldCom's bankruptcy filing the following year (which in turn was surpassed by the bankruptcy of Lehman Brothers in 2008). On Enron: Bethany McLean & Peter Elkind. *The Smartest Guys in the Room*. (New York: Portfolio Trade, 2003). On WorldCom: Lynne W. Jeter, *Disconnected: Deceit and Betrayal at WorldCom*, (New Jersey: Wiley, 2003)

²⁰ International Shareholder Services, *2017-2018 ISS Global Policy Survey* (Rockville, MD: International Shareholder Services, September 25, 2017), 6, www.issgovernance.com/file/policy/2017-2018-iss-policy-survey-results-report.pdf



liquidation limitations. In such jurisdictions, suggested participants, companies must develop other mechanisms that link pay to performance without disrupting the status quo.

WHAT IS “BROKEN”?

Here, participants raised a number of concerns. Many during the session were troubled by the practice of benchmarking and its ratcheting effect on executive pay. The swelling complexity of compensation plans also raised concerns, with participants from across jurisdictions observing that an uncomfortable number of cases arise in which neither a company’s directors nor its executives can articulate a clear link between performance and pay. Questions also arose around the utility of mandatory compensation disclosure requirements. Although some participants viewed the requirements as necessary self-scrutinizing mechanisms, many viewed them as overly-blunt, unwieldy instruments whose utility is greatly outweighed by their cost of compliance. Some also suggested that the issuer liability risk associated with mandatory disclosure has caused firms to adopt a more formalistic approach to compliance, which has reduced the overall amount of useful information released.

Some participants suggested that the focus should not be on whether senior managers are paid too much, but rather on whether lower level employees are paid enough. “How often do boards investigate wages of their lowest-level employees?” challenged one participant. Do boards ever consider what the living wage is in the different areas in which the company operates? How often do institutional investors put external pressure on companies by taking salaries of

“How often do boards investigate wages of their lowest-level employees?”

low-level employees and living wage initiatives into account? Not all participants agreed, however, that the difference between top and bottom earners suggests that compensation structures require repair. “In efficient markets,” one participant rebutted, “there are winners and losers. We should not look to markets to create fairness or redistribute wealth.”

WHAT IS AT STAKE?

Finally, participants debated the potential risks posed by wage disparity. Some suggested that large institutions are already keenly aware of the increasing reputational risks for corporations posed by wage disparity and inequality. For example, one participant cited that global textile and footwear brands have been boycotted due to links to child labor and international food brands have been publicly chastised for their role in modern slavery.²¹ However, another participant suggested that the pressure on corporations arising from their perception of such reputational risks, while somewhat impactful, is inadequate given the “fragility of the context” in which wage disparity persists. That participant argued that the combination of global economic weakness—reflected in indebtedness relative to productivity—and widening wage inequality could lead to social and political instability. Indeed, recent studies on global economic indicators suggest that the total global aggregate debt to GDP ratio is approximately 325 percent, \$78 trillion

²¹ Max Nisen, “How Nike Solved Its Sweatshop Problem,” *Business Insider*, May 9, 2013, www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5; Annie Kelly, “Nestle Admits Slavery In Thailand While Fighting Child Labour Lawsuit in Ivory Coast,” *The Guardian*, February 1, 2016, www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast





of pension liability worldwide is unfunded, and \$9.5 trillion of sovereign debt at present has negative interest rates.²² As the participant observed, these data are particularly worrying when viewed in context of the complete wage stagnation, in real terms, of blue collar workers since 1968 and of those in the middle class from 2000 to 2015.²³

Meanwhile, in respect of income at the top, studies show that, from 1978 to 2016, CEO compensation rose by 807 or 937 percent (using stock options granted or stock options realized, respectively).²⁴ At 937 percent, the rise is more than 70 percent faster than the rise in the stock market over the same period.²⁵ Many participants expressed concern that the speed at which wages at the top and bottom have diverged over the last 50 years suggests that, as observed by one participant, “there is great risk of the wheels coming off.”

Overall, whether enlightened self-interest will generate an effective response by companies to dramatic inequality in their own workforces, whether companies need nudges from the investor community or government, and/or whether the nature of government action should shift from reliance on the blunt instrument of disclosure to more prescriptive means, there was substantial consensus at the session that something needs to be done to address the issue of wage inequality.

²² Institute of International Finance, *Global Debt Monitor – April 2017* (Washington, D.C.: Institute of International Finance, April 2017), www.iif.com/publication/global-debt-monitor/global-debt-monitor-april-2017; Citi GPS, *The Coming Pension Crisis* (New York: Citi GPS, March 2016), 3, www.apapr.ro/images/BIBLIOTECA/reformageneralitati/2016_percent20citi.pdf; Jeff Cox, “Negative-yielding Government Debt ‘Supernova’ Jumps to 9.5 trillion,” *CNBC.com*, June 16, 2017, www.cnbc.com/2017/06/16/negative-yielding-government-debt-supernova-jumps-to-9-point-5-trillion.html

²³ Lawrence Mishel and Jessica Schieder, “CEO Pay Remains High Relative to the Pay of Typical Workers and High-Wage Earners,” *Economic Policy Institute*, July 20, 2017, www.epi.org/publication/ceo-pay-remains-high-relative-to-the-pay-of-typical-workers-and-high-wage-earners

²⁴ *ibid.*

²⁵ *ibid.*

CASE STUDY: GOOGLE

In July 2017, James Damore, a young software engineer at Google, wrote an internal memo challenging Google's internal corporate views, as Damore perceived them, regarding diversity in the workforce. The memo was leaked to the public, and a PR firestorm erupted. The general media reportage suggested that the memo demonstrated male chauvinistic bias, relied on unsupported "scientific" assertions, and sought to excuse the underrepresentation of women in Google's workforce. However, some significant sources defended the memo as a balanced argument that merely suggested that factors other

than discrimination account for the imbalanced numbers of women in tech. Nonetheless, whether the media reporting was accurate or not, a great deal of popular outrage followed and Damore was summarily fired by Google on August 7, 2017, two days after the memo became public. Google CEO Sundar Pichai also released his own memo in which he denounced parts of Damore's manifesto and suggested that parts violated Google's code of conduct, which asks each "Googler" to do his or her utmost to ensure a workplace that is free from harassment, intimidation, bias and unlawful discrimination.

The content and tone of the Damore memo divided the breakout group from the outset of the discussion. Some participants, both men and women, were offended by the memo's anti-diversity message and questioned why Google waited until the memo had become public to fire Damore. Others, all men, conceded that circulation of the memo may have been an act of poor judgment, but nonetheless suggested that the memo is far from the unhinged rant painted by the media. Further, this latter group argued that Damore should have been able to express his views without retribution.

More than a microcosm of the memo's public reception, the group's collective reaction strongly suggests that companies should seek out a variety of perspectives in order to identify, understand and respond to divisive issues in the workplace. Although the participants were split in terms of their reaction to the memo, all agreed that the issues it presented needed to have been put to the board or even a newly-formed special committee, which in turn needed to have been diverse enough to give the CEO sensible advice.

Participants debated whether Google's response to the memo demonstrates the importance of pre-emptive action on divisive issues. As outlined above, Google's response consisted of essentially two elements: Damore's dismissal and a partial denouncement by Google's CEO. Most agreed that the message communicated by Google's response, particularly the CEO's reference to violations of Google's "folksy" code of conduct, was rushed and unclear. Given the well-documented diversity issues at Uber just six months prior to the memo's emergence, some participants suggested that Google should have been better prepared. These participants queried whether Google's crisis management strategy might have been more effective had Google previously published position statements or included language in its code of conduct that clearly condemns sexism in the workplace. Other participants, however, citing the divisiveness of the times and the global scope of most companies, were uncomfortable with the notion that a company should be expected to preemptively address the "innumerable" issues it faces. Still others questioned the extent to which a company's code of conduct changes behavior.

Most participants lamented Google's response as a missed opportunity. Acknowledging that hindsight is 20/20, participants nonetheless emphasized that Google had a significant opportunity to focus public discourse on the issues surrounding diversity and freedom of expression—two topics that affect companies and individuals around the world. For example, Google could have held publicized events with groups spearheading women's rights in the workplace and freedom of expression or presented

detailed plans for how management intends to address sexism and balance freedom of expression going forward. Instead, participants observed, the conversation started by Damore's memo is now caught up in the propriety of Damore's dismissal. The PR nightmares, one participant observed, should be seen by the courageous director as a unique opportunity to make a difference on the issues that matter.

In terms of potential improvements Google can make going forward, participants identified the following mechanisms:

- Diversification of the board so as to ensure reasonable advice on the issues, social or otherwise, facing the tech industry. Alternatively, adoption of special committees that are diverse enough to provide wide-ranging insight on “hot button” issues.
- Inclusion of clearly-defined objectives and guidelines in the Google code of conduct with respect to diversity in the workplace and freedom of expression.
- Drafting and circulation of policy papers with respect to divisive issues in the tech industry.
- Adoption of rigorous and frequent exercises through which senior management and the board can better understand the issues faced by Google employees.



Susan Revell – A workplace that doesn't reflect society won't attract the talent it needs

BNY Mellon executive on support networks and diversity in the workplace

"A 'courageous director' for me would be somebody who is willing to speak up, stand out, take a path maybe less traveled," says Susan Revell, general counsel and chief controls officer for Europe, the Middle East, and Africa (EMEA) at BNY Mellon.

Revell, who leads the Legal, Risk, Compliance and Corporate Project Management Office and regional area management teams across EMEA, reflected on the role of directors. "Courage and independence may actually be quite similar bedfellows in a way," she adds. "I think you need to be courageous if you want to constructively challenge or if you want to be respectfully confrontational in the boardroom." Passionate about improving diversity and inclusion in the workplace, Revell is the EMEA executive sponsor for BNY Mellon's Women's Initiative Network (WIN).

While she says she has been fortunate never to have felt like her gender was a constraining factor in her career – "I've hopefully been enabled by my sponsors and my mentors to get involved in things which have seen me grow and develop at the companies I've worked for" – Revell realizes the need for such a network. "I think society perhaps hasn't changed as much as I would have hoped over the last 20 years," she laments. After speaking with some of the young women in their regional offices at BNY Mellon earlier this year, Revell found a lot of stereotypical responsibilities – such as looking after children or caring for elderly parents – still fell on young women. By sponsoring the network, Revell has been able to show her support for female employees by giving them tools and helping them



“I think you need to be courageous if you want to constructively challenge or if you want to be respectfully confrontational in the boardroom.”

Susan Revell

seek out real role models they can relate to or aspire to be professionally.

Revell says, "[The network is] ensuring that the females in our employee population have fulfilling careers and that they can see the next stage of development."

To improve diversity and inclusion in the

workplace, all parties have to be involved in the conversation. “I try to encourage the men in our group to engage and learn and not be fearful of the gender diversity discussion,” says Revell. “I’m very keen on ensuring that men are advocating for real change too, whether it’s because they know it’s the right thing to do naturally, or whether they want to ensure that their daughters have that satisfying and fulfilling career experience... I don’t mind where they come from, but together we can make change.

“My challenge to us all is to bring the society forward.”

Earlier this year, BNY Mellon was recognized for its efforts in increasing its commitment to gender equality in the workplace. It received a perfect score in the 15th edition of the Human Rights Campaign’s Corporate Equality Index, which rates workplaces on lesbian, gay, bisexual and transgender equality. It was also included in the *Times* Top 50 Employers for Women.

Commenting on the latter achievement, Revell says, “I think that says something about our culture. Hopefully, something around it being a fulfilling place to work, with strategies and resources in place that *enable* rather than constrain.

“I think it is a place which appreciates difference and leveraging difference, but in a collegiate and collaborative way and looking to build consensus at the end of the day. I think those are some of the things that make BNY Mellon an attractive place... I joined four years ago, and I’m very pleased I made that decision.”

Concern for the diversity of the workforce has recently been brought up in discussions related to the UK’s decision to leave the European Union. Revell says she believes that any geopolitical fragmentation, where people behave more exclusively, is likely to be somewhat damaging.

“But my professional job is to ensure that we make the best of the hand of cards that we’ve been dealt and look after our employees and our clients, and ensure the management is thinking creatively about how we use the opportunities that Brexit provides to our company, as well as thinking about how do we limit some of the more damaging aspects.”

When asked why diversity is important, Revell said, “I think you need to reflect society, and if a workplace doesn’t reflect society then it isn’t going to be able to attract and retain the talent that it needs. That [is what] we all need in a world where there isn’t enough talent to go around.”



Conclusions of the Session

In focusing on corporate citizenship and responsibility, the 2018 session asked whether corporations can better serve people, planet and profit.

- 1. Although enhancing corporate profit and shareholder gain remain the foremost purpose of corporations worldwide, against the backdrop of growing social concerns (e.g., global warming, worldwide poverty) companies are increasingly being asked to take the lead in addressing some of society's most difficult problems.** Corporations are often able to rationalize taking a role in addressing social issues and bearing the short-term costs of doing so as consistent with long-term profit maximization. However, a substantial number of participants thought it appropriate for corporations to bear the costs of addressing social issues without needing to justify doing so on long-term profit maximization grounds.
- 2. Corporate culture is a key element in determining how corporate employees behave.** While culture is defined by the tone at the top, how to drive cultural expectations throughout the organization remains an important governance issue for senior management and directors to solve.
- 3. Collegiality among board members has traditionally been highly valued as promoting efficiency. However, the complexity of issues with which corporations must deal in a global world, disruptive technology, and serious social concerns increasingly require boards willing to encourage debate and a variety of views.** These challenges also require “courageous” directors, however defined: directors with sufficient independence from management and from their colleagues who are willing to stand up for corporate values (whether by leading change or challenging it – or simply having the courage to take on the views of others and leave their own comfort zones). Having diversity in board composition increases the range of experience and value of each voice. On the other hand, these courageous directors must also understand team play, in order to be collegial and have the respect of their peers.
- 4. A vital corporate governance issue is the effectiveness of control functions.** Boards must assure that leadership of the control functions is of a very high quality and has the respect of senior management and the board. Board members exercising control functions must be able to partner with the business, but also be willing to escalate issues to the appropriate levels of management and to the board without fear that doing so will negatively impact their job or level of compensation.

5. **Institutional investors have transformed the governance dynamic and imposed intense scrutiny on executive compensation and corporate governance.** Impressive growth among institutional investors has resulted in a concentration of economic power perhaps unseen since the 1920s. As a result, management and the board are increasingly required to engage with such shareholders on a variety of topics, including compensation, the composition of the board and other corporate governance issues.
6. **Compensation structure and wage inequality will continue as sources of constant media attention, shareholder engagement, and regulatory focus for years to come.** Whether enlightened self-interest will generate an effective response by companies to dramatic inequality in their own workforces, or whether companies need nudges from the investor community or government, or if the nature of government action should shift from reliance on the blunt instrument of disclosure to more prescriptive means, there was substantial consensus at the session that something needs to be done to address the issue of wage inequality.



Next Steps for the Salzburg Global Forum on Corporate Governance

The concept of good corporate citizenship is not new, but societal expectations evolve. Although principles of corporate governance seem well-established, they need to remain fit for purpose in this fast-changing world. Directors of multinational corporations should learn lessons from the past, but apply them in a future-looking manner. They must scan the horizon – to predict at least some of what may come next and to make their corporations more adaptable to new challenges.

Rather than being passive bystanders, courageous directors can themselves advance societal goals. These go beyond traditional corporate social responsibility to actually look at how corporations innovate with and for society as a core component of their operations.

How can boards more proactively identify business practices that may become unacceptable for one reason or another? What can boards do to improve the resilience of their corporations in the face of inevitable – and unexpected – disruption? Placing a premium on quarterly results does not enable this long-term thinking, and opens companies up to harder falls.

The rise of new technologies will further increase the variables directors have to contend with. Yet embracing new technologies might even serve to improve governance and transparency, for example through real-time internal data sharing as well as external inputs.

Some fundamentals of corporate governance may continue to apply, including across different jurisdictional and cultural contexts. At the same time, however, there are many grey areas due to government regulations that are outdated, based on older technologies, or simply slow to adapt and thus unclear in application to new technologies. Today's frameworks for corporate governance will themselves need an update for this brave new world.

The *Salzburg Global Forum on Corporate Governance* has created a unique atmosphere for this critical new thinking. It brings together an outstanding mix of participants from different regions of the world who come from a variety of professional roles and diverse perspectives, spanning generations to mix rising new thought leaders with people having long and battle-tested experience. The inspiring retreat setting of Schloss Leopoldskron fosters the trust, openness and creativity essential for these dialogues of global significance.

“Today’s corporations are under ever closer scrutiny. Like the rest of society, their operations and culture will have to change radically as the ‘Fourth Industrial Revolution’ gathers pace. Attitudes to power, progress and value are already in flux. Against this backdrop, courage in the boardroom will matter more than ever before.”

Clare Shine
Vice President &
Chief Program Officer
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List of Participants

(Positions, organizations and bios correct at time of session – October 2017)



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Andrew Bagley is the general counsel of Europe, Middle East, and Africa (EMEA) and head of the EMEA Legal Department at Goldman Sachs. He serves as counsel to the European Management Committee and the Board of Directors of Goldman Sachs International. He also serves as counsel and member to the Firmwide Suitability Committee and EMEA Conduct Risk Committee. Previously, Mr. Bagley served as co-general counsel of EMEA and co-head of the EMEA Legal Department. Prior to that, he was EMEA deputy general counsel. Earlier in his career, Mr. Bagley served as co-head of the EMEA Securities Division Legal team and had oversight of the EMEA Investment Management Division, Investment Banking Division, and Principal and Loan Finance Legal practice areas. Mr. Bagley joined Goldman Sachs in 2000 and was named managing director in 2006 and partner in 2016. Prior to joining the firm, he qualified as a solicitor at Herbert Smith in London. Mr. Bagley earned a B.A. in Literae Humaniores from Magdalen College, Oxford.



Stephanie Bertels, Canada

Stephanie Bertels is the director of the Centre for Corporate Governance and Sustainability at Simon Fraser University's (SFU) Beedie School of Business in Vancouver, Canada. She founded and leads the Embedding Project, where she works with dozens of global companies to help them embed sustainability into their operations and decision-making. Dr. Bertels developed an online knowledge portal (www.embeddingproject.org) featuring a curated selection of the most relevant corporate sustainability resources – including practical guides and tools developed through her own research. Her most recent work draws upon interviews with over 200 global CEOs and Board Chairs to explore how corporate governance and corporate strategy processes are shifting to account for environmental and social constraints. She has previously worked as an environmental engineer and is a trustee and chair of SFU's Academic Pension Plan. Dr. Bertels has a B.Sc. in geological environmental engineering, a M.Sc. in petroleum engineering, and a Ph.D. in strategy and global management and sustainable development. Dr. Bertels is a Salzburg Global Fellow.



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Byron Boston is President, CEO and Co-Chief Investment Officer of Dynex Capital (NYSE:DX), a leading Real Estate Investment Trust (REIT) with approximately \$4 billion in managed assets. Mr. Boston is responsible for strategy and operations as well as fostering and maintaining key relationships with shareholders, creditors, and dealers. He also leads the day-to-day investment, financing, hedging, and financial reporting decisions. Mr. Boston is also a member of Dynex Capital's Board of Directors. Mr. Boston is a seasoned investment professional with 36 years of experience in the fixed income capital markets and the U.S. housing finance system. Since January of 2004 he has built two successful public companies, Dynex Capital and Sunset Financial Resources. Prior to Dynex, Mr. Boston served in a senior leadership role in the investment division of Freddie Mac for 7 years. Between 1981 and 1997 Mr. Boston developed his career as a banker and bond trader, first with Chemical Bank as a Corporate Banking Officer and then with Credit Suisse First Boston as a mortgage-backed securities trader. He is currently a board member of the Mortgage Bankers Association. Mr. Boston received a B.A. in economics from Dartmouth College and an M.B.A. in finance and accounting from the University of Chicago. Mr. Boston is a member of the Board of Directors of Salzburg Global Seminar.

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Walt Burkley is a senior vice president and senior counsel at Capital Group. He has 18 years of investment industry experience, all with Capital Group. Throughout his career at Capital, Mr. Burkley's focus has been on mutual fund governance, public policy matters affecting asset managers, and legal issues relating to the equity investment process. Prior to joining Capital, he practiced corporate and securities law at O'Melveny & Myers. He holds a bachelor's degree in philosophy from Dartmouth College and a J.D. from Vanderbilt Law School.



John J. Cannon III, USA

John Cannon is a partner in the Compensation Governance and ERISA Group of Shearman & Sterling LLP, and co-chair of the firm's Corporate Governance Advisory Group. Mr. Cannon is an inaugural fellow of the American College of Governance Counsel, and is a frequent speaker to boards of directors, professional groups, and law students on executive compensation and corporate governance matters as well as the international regulation of pay in the financial services industry. In his practice, he focuses on all aspects of corporate governance and executive compensation and benefits, including state corporation, securities, banking, bankruptcy, employment and tax laws, and the Employee Retirement Income Security Act. Mr. Cannon has extensive experience in advising corporations and boards of directors on management succession, shareholder engagement, compliance with Dodd-Frank and Sarbanes-Oxley, and the employee issues raised in the mergers and acquisitions context, including in cross-border transactions. He received an A.B. from Harvard College and a J.D. from the New York University School of Law. Mr. Cannon is a Salzburg Global Fellow.



Kathleen Casey, USA

Kathleen Casey is a member of the Board of Directors of HSBC. She has extensive financial regulatory policy experience. Between 2006 and 2011, she served as a commissioner of the US Securities and Exchange Commission, acting as its principal representative in dialogues with the G20 Financial Stability Board and the International Organization of Securities Commissions. Prior to this, she spent 13 years working for the US government as a staff director and counsel of the US Senate Committee on Banking, Housing and Urban Affairs and as legislative director and chief of staff for a US senator. Ms. Casey is also a senior adviser to Patomak Global Partners, a trustee of the International Valuation Standards Council, and a member of the Board of Trustees of Pennsylvania State University, the Trust Fund Board of the Library of Congress, and the Advisory Council of the Public Company Accounting Oversight Board. Ms. Casey holds a B.A. in international politics from Pennsylvania State University and a J.D. degree from the George Mason University School of Law. Ms. Casey is a Salzburg Global Fellow.



Stephanie Cheung, Canada

Stephanie Cheung is executive vice president and chief legal officer of Melco Resorts and Entertainment (Melco) in Hong Kong. Melco develops and operates hotel casinos and integrated resorts in Asia. She has served as head of legal for and secretary to the board of directors of Melco since 2006. Ms. Cheung manages the legal affairs, risk management, and surveillance functions of Melco, including those in Hong Kong, Macau, and the Philippines. She works closely and extensively with Melco's board committee on corporate governance across a wide range of governance matters. She also serves as a member of the board of directors of various Melco subsidiaries. She was named on Legal 500's 2017 GC Powerlist as one of China & Hong Kong's Most Influential Lawyers in Business. She received the 2015 APAC Insider award for "Best Chief Legal Officer (HK)" and the 2010 Women in Gaming award for "Hidden Talent of the Year." The legal team she leads won two 2017 awards for the In-House Community Legal Team of the Year in the categories of Travel & Leisure and Transactional. Prior to joining Melco, Ms. Cheung practiced law for 16 years with reputable international law firms in Hong Kong, Singapore, and Toronto. Her experience included aircraft and project financing, mergers & acquisitions, and capital market transactions. Ms. Cheung holds a B.A. in sociology from the University of Toronto and an L.L.B and M.B.A. from York University.




Melanie Cibik, USA

Melanie Cibik is the senior vice president, general counsel, chief compliance officer, and secretary of Teledyne Technologies Incorporated, a leading provider of sophisticated instrumentation, digital imaging products, aerospace and defense electronics and engineered systems with annual sales of over \$2.1 billion. As an initial member of Teledyne's executive management team, Ms. Cibik has been part of Teledyne's strategic growth transformation, which includes more than 57 acquisitions with an acquisition value of about \$3 billion in 18 years. Ms. Cibik bears legal responsibility for Teledyne's active M&A pursuits and oversees Teledyne's SEC periodic reports, corporate secretariat, and corporate governance programs, directly interfacing with Teledyne's Board of Directors and its committees. In addition to managing Teledyne's human resources department, Ms. Cibik built and oversees Teledyne's environmental, health & safety and trade compliance programs. She began her legal career at Taft Stettinius & Hollister in Cincinnati, Ohio, followed by legal positions in Pittsburgh, Pennsylvania, at Kirkpatrick & Lockhart, PNC Bank Corporation, and Allegheny Teledyne Incorporated. She is a member of the Ohio and Pennsylvania bars and is a California Registered In-House Counsel. Ms. Cibik graduated cum laude from Georgetown University's College of Arts and Sciences, after having become a member of the Phi Beta Kappa, Alpha Sigma Nu, and Phi Sigma Alpha honorary societies. Ms. Cibik received her J.D. from the University of Pittsburgh's Law School, where she served on its Law Review.


Seán M. Cleary, South Africa

Seán Cleary is chairman of Strategic Concepts (Pty) Ltd, executive vice chair of the FutureWorld Foundation, and a director of companies. He is on the faculty of the Parmenides Foundation, and lectures on global corporate strategy, conflict resolution, and development economics in South Africa, the US, and Europe, and on national security at the South African Defence Staff College. He chairs the Advisory Board of the Global Economic Symposium, is a trustee of the South African Foundation for Conciliation, and as a strategic advisor to the World Economic Forum. He served in the South African Navy, before a diplomatic career in the Middle East, US, and Namibia, where he initiated negotiations between Namibia's political parties, the release of political prisoners, and the adoption of a Bill of Rights, en route to independence. He was a member of the Facilitating and Preparatory Committees of the South African Peace Accord and chairman of the Working Group on the Code of Conduct for Political Parties and Organizations, an executive committee member of the NEPAD (New Programme for Africa's Development) Business Steering Group, chair of the International Advisory Board of Operation Hope and a member of its Board of Directors; a member of the Board of LEAD International, the International Foundation for Electoral Systems, the Rocky Mountain Institute, and the Carbon War Room. He served on National Advisory Committees in Namibia, and as senior advisor to the Arab Business Council. He is a recipient of academic and public service awards and has been published in South African, British, German, and American journals. He is the co-author, with Thierry Malleret, of two books on risk: "Resilience to Risk," and "Global Risks." He has contributed chapters to several others, including "Learning from Catastrophes." Mr. Cleary graduated in social sciences and law and received his M.B.A. from Brunel University. He is a member of the Board of Directors of Salzburg Global Seminar.


Bharat N. Doshi, India

Bharat Doshi is the chairman of Mahindra Intertrade Limited and a director on the board of Mahindra Holdings Limited. He is also an independent director and chairman of the audit committee of Godrej Consumer Products Limited and an independent director and member of the audit committee of Dr. Reddy's Laboratories Limited. Mr. Doshi served as the president of Bombay Chamber of Commerce and Industry for the year 2009-10. He was also the executive director and group CFO of Mahindra & Mahindra Limited, the flagship company of the Mahindra Group, before he retired from his executive position in 2013. Mr. Doshi was nominated by the government of India as a director on the Central Board of the Reserve Bank of India in March 2016. He has been actively involved with the work of chambers of commerce and industry in India and has been a member of various expert committees which influence economic and business policies of the government. He serves on the advisory board of Excellence Enablers, an organisation committed to promote corporate

governance in India. Mr. Doshi's outstanding career achievements have earned him several awards and accolades, including "India's Best CFO" from Business Today and "CFO of the Year" from IMA India in 2005 and from CNBC in 2007. In February 2013, Mr. Doshi was awarded the "CA Business Achiever" – Corporate award by ICAI for his exceptional performance and achievements in the sphere of business. He holds a Bachelor of commerce and a Master's degree in law from Bombay University. Mr. Doshi is a Salzburg Global Fellow.

Victoria Hardy, UK

Victoria Hardy is a senior lawyer at Barclays PLC and is responsible for advising the group on mergers & acquisitions, governance, corporate law, and funding issues. She is currently supporting the Group Company Secretary as Barclays transitions to a new corporate structure ahead of the 2019 UK structural reform deadline. Prior to joining Barclays, Ms. Hardy worked at Clifford Chance LLP in London and New York. Ms. Hardy holds a M.Geog. from St. Hilda's College at the University of Oxford, a C.P.E. from City University London, and an L.P.C. from the College of Law, London.



Klaus J. Hopt, Germany

Klaus J. Hopt is a professor and director emeritus at the Max-Planck-Institute for Comparative and International Private Law in Hamburg. From 1974 to 1995, he taught in Tübingen, Florence, Berne, Brussels, Paris, Rome, Vienna, and Munich. He was also a visiting professor at the University of Chicago, Harvard, NYU, and Columbia. Prof. Hopt served as a judge in the Court of Appeals in Stuttgart from 1981 to 1985. He was a member of the High Level Group of Company Law Experts, European Commission (2001-2002), the German National Academy of Sciences Leopoldina, the supervisory board of the Deutsche Börse AG (2003-2005), the board of the European Corporate Governance Institute (2005-2011), and the International Advisory Board of the Alexander von Humboldt-Foundation (2011-2014). Prof. Hopt also served as an expert for the German Parliament, German Federal Constitutional Court, various German Ministries, German Central Bank, European Commission, Bank for International Settlements, Bulgaria, and World Bank. He has publications on corporate governance and boards in the American Journal of Comparative Law volumes 59 (2011) and 61 (2013) as well as other books and law reviews. Prof. Hopt is a Salzburg Global Fellow.



Frederick J. Knecht, USA

Fred Knecht is Executive Vice President and Deputy General Counsel of BNY Mellon, resident in New York. He is a member of the company's Senior Leadership Team. Mr. Knecht oversees the legal coverage of BNY Mellon's global Investment Services and Markets businesses. These businesses include Asset Servicing, Broker Dealer Services, Corporate Trust, Depositary Receipts, Pershing, Treasury Services, Capital Markets, Derivatives and FX, Securities Finance and Prime Services. Prior to joining BNY Mellon in 2014, Mr. Knecht was a partner in the securities and capital markets practice at Covington & Burling LLP (2009-2014), General Counsel of Global Investment Banking and Private Equity at Merrill Lynch (2006-2009), and Head of Investment Legal (and other roles) at Goldman Sachs (1990-2006). He began his legal career at Sullivan & Cromwell LLP in New York. Mr. Knecht is a graduate of Stanford Law School and Tufts University.



Christopher F. Lee, China

Christopher F. Lee is a senior partner at FAA Investments, a private investment group focusing in real estate and early stage companies. He is also co-founder and managing partner at Star Magnolia Capital (Hong Kong) Limited, an alternative investment firm conducting in-depth research on hedge funds and private equity managers. Mr. Lee is also a board director with expertise in financial markets, risk management, governance and leadership development. Currently, he serves on two boards; as an independent board member with Matthews Asia Funds and The Asian Master Fund (ASX: AUF). Previously, Mr. Lee was managing director and divisional & regional heads at Deutsche Bank AG, UBS Investment Bank AG and Merrill Lynch and Co. He has over twenty years of global capital markets experience; managing derivative product development and providing equity sales & trading functions to institutional investors. He is an advocate of sustainable



enterprises and environmentally conscious projects, serving on various boards with a passion for promoting education, conservation, energy efficiency and sustainability. Mr. Lee holds a B.S. in mechanical engineering and an M.B.A. from the University of California, Berkeley, and completed the A.M.P. at Harvard University. He is a member of the Board of Directors of Salzburg Global Seminar.



Michael H. Y. Ling, *Australia*

Michael Ling is the deputy company secretary for CLP Holdings Limited and oversees the day to day functions of CLP Group Corporate Secretarial. Prior to taking up this position in 2016, Mr. Ling was the legal counsel on the international team of CLP Group Legal Affairs for over four years. Before joining CLP, he was in the group legal function of AIA Group Ltd and was involved in the restructuring of the AIA group of companies. Before joining AIA, he was a lawyer in private practice specializing in corporate, M & A and listing rules related regulatory work with international law firm Herbert Smith and have worked in their offices in Hong Kong, London and Beijing.



Simon M. Lorne, *USA*

Simon Lorne is vice chairman and chief legal officer of Millennium Management LLC, a hedge fund manager responsible for over \$30 billion in assets under management, with offices throughout the world. He is also the Chair of the Alternative Investment Management Association (AIMA). Prior to joining Millennium Management, he was a partner in the Los Angeles based law firm of Munger, Tolles & Olson LLP, the global head of internal audit at Salomon Brothers and the global head of compliance at Citigroup. He also serves on the board of directors and chairs the audit committee of Teledyne Technologies, Inc. (New York Stock Exchange: TDY) Mr. Lorne has served in a wide variety of public sector, academic and private sector positions during the course of his career. He served as general counsel of the United States Securities and Exchange Commission. He served for seventeen years (until 2016) as the co-director of Stanford Law School's Directors' College and is an adjunct professor at the New York University Law School and the New York University Stern School of Business. Mr. Lorne has authored two books, three practitioner-oriented monographs and a number of articles in law reviews, magazines, and other publications. Mr. Lorne holds an A.B. from Occidental College and a J.D. from the University of Michigan Law School. Mr. Lorne is a Salzburg Global Fellow.



Robert A. Malone, *USA*

Bob Malone is executive chairman, president and chief executive officer of First Sonora Bancshares, the holding company for Sonora Bank, Sonora Mortgage Company and Sonora Title Company. He joined Sonora following a 35-year career with BP. Prior to his retirement he was an executive vice president of BP plc, chairman and president of BP America and a member of BP's London based Executive Management team that guided the worldwide operations of BP. Mr. Malone has served in a variety of operating, engineering and executive roles with BP's subsidiary companies, and he also served as president, CEO and COO of the Alyeska Pipeline Service Company, operator of the Trans Alaska Oil Pipeline, and as the chief executive of the London based BP Shipping Ltd. Over his 43-year career, Mr. Malone has developed a reputation for building teams, driving change, improving operating and safety performance and changing cultures. He currently serves as an independent director of the Halliburton Company, Peabody Energy Company and Teledyne Technologies Incorporated. Mr. Malone earned a B.S. in metallurgical engineering from the University of Texas at El Paso and was an Alfred P. Sloan Fellow at the Massachusetts Institute of Technology where he received a M.S. in management.



Stephen Monnier, *Australia*

Steve Monnier is a director at BlackRock's EMEA Investment Stewardship team based in London. In this role, he is responsible for analysis, engagement, and voting across the Nordic region, Germany, Austria, Switzerland as well as covering certain sectors in the UK. Prior to the current post, Mr. Monnier served as director of BlackRock's corporate and operational risk department. After moving to the UK from Australia in 2003, Mr. Monnier joined BNY Mellon, where he

held a number of corporate and operational risk positions. Previously, he spent three years at Unisys as an operational risk manager after working as a deal manager at Macquarie Bank in the Project and Structured Finance Group for three years. Mr. Monnier started his career in 1994 as an analyst for Banker Trust. He is also a Fellow Certified Practising Accountant from the Australian Society of Certified Practising Accountants. Mr. Monnier holds a B.A. in Business from Griffith University, Australia and an M.Sc. in business strategy and the environment from Birkbeck College, University of London, UK. He is a Salzburg Global Fellow.

Kate A. Mozzicarelli, *Australia*

Kate Mozzicarelli is a managing director and head of the Corporate Advisory Legal Team at Morgan Stanley in London. She is responsible for a team that provides advice on governance, finance/treasury, risk, and internal control matters. Over the past couple of years, Ms. Mozzicarelli has been responsible for leading the firm's implementation of the Senior Manager & Certification Regime, a new regulatory regime implemented within financial services firms in the UK designed to clarify responsibilities and drive accountability at board and senior management level. She has been involved in a number of internal committees and governance forums at Morgan Stanley including acting as Secretary to the EMEA Franchise Committee and she is currently a member of the UK Culture Advisory Group. Ms. Mozzicarelli joined Morgan Stanley in 2008 as a lawyer covering Global Capital Markets and transferred into her current role in 2014. Prior to joining Morgan Stanley, she worked for 10 years as a corporate lawyer in private practice at a major London law firm. Ms. Mozzicarelli has a B.A. (honors) in Modern History from the University of Warwick and a post-graduate diploma in law from the College of Law, UK.



Robert H. Mundheim, *USA*

Robert Mundheim is of counsel to Shearman & Sterling LLP and formerly executive vice president and general counsel of Salomon Inc. Prior to joining Salomon Inc., he was co-chairman of the New York law firm of Fried, Frank, Harris, Shriver & Jacobson. He served as University Professor of Law and Finance at the University of Pennsylvania Law School, where he had taught since 1965, and was dean of the law school for seven and a half years. Among his other professional activities, Mr. Mundheim has been general counsel to the US Treasury Department (1977-1980), special counsel to the Securities and Exchange Commission (1962-1963), vice chairman, governor-at-large, and a member of the Executive Committee of the National Association of Securities Dealers (1988-1991). He was chairman of the Board of Directors of Quadra Realty Trust, a director of eCollege, Benjamin Moore, Commerce Clearing House, Arnhold & S. Bleichroeder Holdings, Inc., Union Capital Corporation, Weeden, Inc., and First Pennsylvania Bank, and a member of the Supervisory Board of Hypo Real Estate Holding AG. He is presently a director of Gogo LLC. Mr. Mundheim is a member of the Board of Trustees of New School University and of the Curtis Institute of Music. He is an emeritus member of the Council of the American Law Institute. He served as a member of the American Bar Association Task Force on Corporate Responsibility and has been a faculty member of the Vanderbilt Directors' College, the Duke Directors' Education Institute, and the Stanford Directors' College. He was the president of the American Academy in Berlin and received the Officer's Cross of the Order of Merit of the Federal Republic of Germany. He holds a B.A. (magna cum laude) from Harvard College, as well as a LL.B. (magna cum laude) from Harvard University Law School, and an M.A. (honors) from the University of Pennsylvania. Mr. Mundheim is a member of the Board of Directors of Salzburg Global Seminar.



Melissa Obegi, *USA*

Melissa Obegi is Asia General Counsel for Bain Capital, based in Hong Kong. She is responsible for transactional, portfolio, and operational legal matters and risk management for Bain Capital's Private Equity and Credit businesses in the Asia Pacific region. Prior to joining Bain Capital in 2012, Ms. Obegi was a Managing Director and Asia Regional Counsel for Oaktree Capital in Hong Kong. She started with Oaktree Capital as associate general counsel at its Los Angeles headquarters in 2002. Prior to that, she held various positions with the Overseas Private Investment Corporation, a U.S. government agency



that supports investment in global emerging markets with private equity investment funds, project finance, and political risk insurance. Ms. Obegi began her career with Coudert Brothers in New York as an associate in the International Banking group. She holds a B.Sc. in foreign service from the Foreign Service School at Georgetown University, and a J.D. from the School of Law at the University of California, Los Angeles. Ms. Obegi is a Salzburg Global Fellow.



Susan Revell, UK

Susan Revell serves as general counsel and chief controls officer for Europe, Middle East, and Africa (EMEA) at the Bank of New York (BNY) Mellon and assumes responsibility for second line of defense in the region in addition to her responsibilities as general counsel. In this capacity she leads Legal, Risk, Compliance, and Corporate Project Management Office and Regional Area Management teams across EMEA. Ms. Revell is a member of the Global General Counsel, the EMEA Chairman's Forum (highest EMEA management body), and BNY Mellon's Senior Leadership Team (second highest management body). Ms. Revell has helped accelerate transformation and change as the company continues to mature as a Global Systemically Important Financial Institution ("GSIFI"). Ms. Revell joined BNY Mellon in 2013 from Morgan Stanley, where she worked for over seventeen years in a number of increasingly senior legal and regulatory related positions. She began her legal career as an associate at Clifford Chance, where she worked for six years both in London and Hong Kong, before moving to Morgan Stanley. Ms. Revell is passionate about Diversity & Inclusion and is the EMEA Executive Sponsor for BNY Mellon's Women's Initiative Network ("WIN"), a global business resource group for the professional development and advancement of women at BNY Mellon. She is also the sponsor for Diversity & Inclusion for the Legal Department globally. Ms. Revell is vice chairman of habitat for humanity GB, a global charity focusing on the elimination of housing poverty and has worked actively with Pilotlight, a UK based organization which seeks to focus on interaction between business professionals and charities by sharing skills effectively. Until recently, Ms. Revell a trustee of Monteverdi Choir and Orchestra which is led by the conductor Sir John Eliot Gardiner. Ms. Revell graduated from the University of Westminster in 1988 with a LL.B (first class honors).



Julie G. Richardson, USA

Julie Richardson is a member of the Board of Directors of UBS Group AG. She is also a member of the Risk Committee for UBS. In 1986, Ms. Richardson began work for Merrill Lynch as managing director of media and communications. In 1998, she transitioned to JP Morgan Chase & Co., where she served as vice chairman and the head of global telecommunications. Prior to joining UBS, Ms. Richardson worked for Providence Equity Partners in New York first as a partner and head, then as a senior advisor. She is currently a member of the Boards for the Hartford Financial Services Group, Yext, Arconic Inc., and Vereit, Inc. Ms. Richardson holds a bachelor's degree in business administration from the University of Wisconsin-Madison.



Edward B. Rock, USA

Edward Rock is a professor of law at New York University (NYU) School of Law where he teaches corporate law, mergers and acquisitions, and a variety of other courses. He is also the director of NYU's Institute for Corporate Governance and Finance. Prior to these appointments, he was the Saul A. Fox Distinguished Professor of Business Law at the University of Pennsylvania Law School. Mr. Rock has also taught as a visiting professor at Columbia University, New York, and Hebrew University, Israel. He publishes widely on various issues in corporate law and corporate governance, including the role of hedge funds, the intricacies of corporate voting, corporate governance politics, and has consulted for a variety of government agencies and law firms. Mr. Rock is one of the authors of "The Anatomy of Corporate Law", a widely used text on comparative corporate law. He started his career as a plaintiff side class action lawyer specializing in antitrust and shareholder class actions. He holds a B.S. in physics and mathematics from Yale University, a B.A. in philosophy, politics, and economics from the University of Oxford, UK, and a J.D. from the University of Pennsylvania Law School. He is a Salzburg Global Fellow.

Katrina Scotto di Carlo, USA

Katrina Scotto di Carlo is co-founder and creative director of Supportland, an innovation company dedicated to building thriving and resilient communities. She was a member of the City of Portland's Socially Responsible Investment Committee and was instrumental in forming the landmark decision of the Portland City Council to divest from all corporate securities in April of 2017. She has spent the last decade advocating for mainstreet economies through policy, public speaking, and her work as a social entrepreneur. This work has included co-founding both Placemaker (a technology platform that strengthens mainstreet businesses and builds community wealth) and Portland Made (an ecosystem support for the local Maker Movement). Contrary to the divisiveness of American politics, Ms. Scotto di Carlo prides herself on maintaining friendships across ideological lines and welcomes world views contrary to her own. Ms. Scotto di Carlo holds a B.A. in fine arts, history, and Southeast Asian studies from the University of California, Berkeley.



David H. Sidwell, UK

David Sidwell is the senior independent director of the Board of Directors of UBS Group AG as well as the chair of its Risk Committee and a member of its Governance and Nominating Committee. Mr. Sidwell began his career in 1975 with positions at Price Waterhouse Coopers LLC and JP Morgan. From 2000 to 2004, he was the Chief Financial Officer (CFO) at JP Morgan Chase & Co. in New York. He worked for Morgan Stanley from 2004 to 2007 as the executive vice president and CFO. Mr. Sidwell is active on the boards of a number of organizations, including Chubb Limited and GAVI Alliance. He is also chairman of the Board of Village Care in New York, the director of the National Council on Aging, and a senior advisor at Oliver Wyman. Mr. Sidwell holds a B.A. from Cambridge University and is a chartered accountant with the Institute of Chartered Accountants in England and Wales.



David J. Simmonds, Australia

As group general counsel, David Simmonds leads a team of lawyers who provide strategic advice and counsel to China Light and Power Co. (CLP) Holdings and its subsidiaries. He has extensive infrastructure experience advising on strategic acquisitions and divestments, projects and construction, corporate structuring, regulatory issues, and competition laws. As chief administrative officer, Mr. Simmonds is responsible for the corporate secretarial affairs of CLP Holdings and its subsidiaries, property development and management activities, insurance services, special projects of the CEO, and a range of commercial and administrative matters of significance. Mr. Simmonds was appointed director of group legal affairs of CLP Holdings in January 2009, then became the group general counsel & chief administrative officer in September 2013, and then company secretary of CLP Holdings in January 2016. Mr. Simmonds holds a Bachelor of Laws (Honours) and a Bachelor of Commerce from the University of Melbourne.



Karen Simon, USA

Karen Simon is a vice chairman in investment banking with JP Morgan in New York City. She currently heads up Director Advisory Services, a new global initiative at JP Morgan designed to facilitate interactions with directors on public company boards. Ms. Simon is a central point of contact for director candidates looking for board opportunities as well as for boards looking to make changes to their composition. Until July 2016, she headed up JP Morgan's Financial Sponsor Coverage group providing investment banking services to the firm's global private equity fund clients. Ms. Simon spent 20 years of her career in London, from 1992 to 2012, including serving in senior roles in oil & gas advisory, Syndicated Finance and as co-head of EMEA Debt Capital Markets prior to joining the Financial Sponsor Group (FSG) in 2004 and being promoted to global co-head of FSG in 2008. Ms. Simon was awarded "Most Influential Woman in Private Equity Advisory" by Private Equity News in 2010 and in 2011 and was cited several times as one of the 100 Most Influential Women in Europe, Middle East, and Africa by Financial News. She sits on the board of Aker ASA in Norway, a publicly traded industrial investment company, and on the board of the Dallas Women's Foundation, a non-profit charity organization focused on the needs of women and children based in Dallas, Texas. Ms. Simon graduated cum laude with her B.A. in Economics from



the University of Colorado, and received her M.A.s from Southern Methodist University in Texas and from the American Graduate School of International Management (Thunderbird) in Arizona.



Conor Sweeney, USA

Conor Sweeney is a director of Public Affairs at Elliott Advisors and joined Elliott's London operation earlier this year, with a focus on communications and public policy. Prior to joining Elliott, he advised a network of business leaders—the American Opportunity Alliance—in their philanthropic, policy, and political engagement. He previously served as a top advisor and communications director to Congressman Paul Ryan in Congress and on the campaign trail. Mr. Sweeney is a graduate of Marquette University in Milwaukee, Wisconsin, where he studied international affairs and economics.



Vikas Thapar, Canada

Vikas Thapar is founder and managing partner of Indus Capital Ltd, a private equity firm focused on Asia and the Middle East. Mr. Thapar previously held a number of senior positions with the International Finance Corporation (IFC), the private sector arm of the World Bank Group, where his responsibilities included head of IFC's European office based in Paris; head of IFC's Central European office based in Prague, and principal investment officer for Asia and the Middle East. Mr. Thapar has extensive experience in emerging markets in direct equity investments, project and infrastructure finance, developing capital markets, setting up and managing private equity funds. He has advised governments, central banks and corporations on privatization, restructurings, setting up capital markets, banking sector reform etc. Mr. Thapar holds a B.Tech (elec. engineering) and an M.B.A. from McGill University, Canada. He undertook advanced management programs at Harvard Business School and John F. Kennedy School of Government, Harvard University. He is a member of the Board of Directors / Investment Committees of several financial institutions and private equity funds. Mr. Thapar is a member of the Board of Directors of Salzburg Global Seminar.



Georg F. Thoma, Germany

Georg Thoma is an attorney at law in Frankfurt, Germany, at Shearman & Sterling LLP. Before his current position, he was a partner at Shearman & Sterling LLP and a member of its Mergers & Acquisitions group from 1991 to 2014. Mr. Thoma practices in the areas of corporate law, mergers and acquisitions, corporate restructuring, and privatization. He acts as counsel for German and international industrial corporations, banks and insurance companies, as well as for investment banks in domestic, international and cross-border mergers, acquisitions, divestitures, restructuring, and other governance related issues. Mr. Thoma has written articles on legal topics in various publications. Mr. Thoma has served as a member of various boards including Nova Chemical Corporation in Canada and Deutsche Bank AG. Chambers Europe has recognized Mr. Thoma as a star individual for corporate and mergers and acquisitions in Germany in 2012, as a Lifetime Achievement Award winner in 2010. and as ranked Mr. Thoma at the top of his field and a senior statesman in 2017. Mr. Thoma received his honorary doctorate in economics in 2005 from the European Business School in Oestrich-Winkel and studied law at the Universities of Freiburg and Bonn in Germany. Mr. Thoma is a Salzburg Global Fellow.



Philip J. Weights, UK

Philip Weights is founder and managing director of Enhanced Banking Governance (EBG) GmbH in Zurich and Dubai. EBG provides corporate governance services to the boards of directors, audit committees and executive management of banks. Mr. Weights is a certified professional director through the Mudara Institute of Directors in Dubai (DIFC) and accredited by the IFC/World Bank group. He is the chairman of the Global Municipal Finance Steering Committee established by the International City Leaders NGO in partnership with the UN-Habitat. He is also a senior lecturer in banking governance with the Swiss Finance Institute, and with the Swiss School of Public Governance at the ETH University in Zurich. He was previously the chief audit executive for EFG Bank in Zurich, and worked for many years with HSBC and Citibank. Mr. Weights is a Salzburg Global Fellow.

John C. Wilcox, USA

John C. Wilcox is chairman of Morrow Sodali Global LLC, an international consultancy providing companies and boards of directors with advice and services relating to corporate governance, proxy solicitation, institutional investor relations, shareholder engagement and strategic cross-border transactions. From 2005 to 2008 Mr. Wilcox served as senior vice president and head of corporate governance at TIAA-CREF. Prior to that he was chairman of Georgeson & Company, the U.S. proxy and investor relations firm. Mr. Wilcox has been an active member of many boards and professional groups including: the Committee for Economic Development Board of Trustees, the Conference Board Global Corporate Governance Center Advisory Board, the International Corporate Governance Network Board of Governors, the National Association of Corporate Directors Blue Ribbon Commission on Board Communication with Shareholders, the Weinberg Corporate Governance Center Advisory Board, the New York Stock Exchange Euronext International Advisory Committee, the Nasdaq Issuer Affairs Committee, Aspen Institute Corporate Values Strategy Group, the American Society of Corporate Secretaries and Governance Professionals, the National Investor Relations Institute, the Woodrow Wilson National Fellowship Foundation Board of Trustees, The Wall Street Lawyer Editorial Board, and the American Bar Association Committee on Corporate Laws. He is also a member of the American and New York Bar Associations. Mr. Wilcox received a B.A. from Harvard College, where he was a member of Phi Beta Kappa, an M.A. from the University of California, Berkeley, where he studied as a Woodrow Wilson Fellow, a J.D. from Harvard Law School, and an LL.M degree from New York University Graduate School of Law.



Jinwei (Kevin) Zhang, China

Jinwei (Kevin) Zhang has been the lead U.S. Securities and Exchange Commission (SEC) compliance and corporate governance counsel of Alibaba Group since September 2014. Before joining Alibaba Group, Mr. Zhang was an associate attorney with Shearman & Sterling LLP in Hong Kong and New York and with Simpson Thacher & Bartlett LLP in Hong Kong and Beijing where he focused on capital markets transactions in the U.S. and Hong Kong and advised U.S. public companies on corporate governance requirements and compliance matters. Mr. Zhang is qualified to practice law in the State of New York and in Hong Kong. He received a B.A. from Sichuan International Studies University in China and a J.D. from Vanderbilt University Law School in the U.S.



Robert J. Jackson Jr., USA**OBSERVER**

Robert J. Jackson, Jr., is a professor at Columbia Law School in New York City and director of its Program on Corporate Law and Policy. Mr. Jackson's academic work focuses on corporate governance and the use of advanced data science techniques to improve transparency in securities markets. His career has spanned the public and private sectors. Mr. Jackson served as a senior advisor at the U.S. Department of the Treasury during the financial crisis, assisting Kenneth Feinberg in his work as Special Master for the Troubled Asset Relief Program Executive Compensation, and previously worked as a lawyer in private practice. Mr. Jackson holds two bachelor's degrees from the University of Pennsylvania, an MBA in Finance from the Wharton School of Business, a master's degree from Harvard's Kennedy School of Government, and a law degree from Harvard Law School.



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