The Roles and Motivations of Key Players in Corporate Governance Cases

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The Past, Present, and Future Roles of the Key Players

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It has only been twenty years or so since corporate governance first emerged as a significant issue in the United States. Over such a short period of time, we have witnessed a tremendous evolution in corporate governance practices. Much of that change can be attributed to the regulatory responses resulting from the failures of large public corporations such as Enron, WorldCom, Tyco, Global Crossing, and Adelphia in the early 2000s. These regulatory responses included the passage of the Sarbanes-Oxley Act of 2002 by Congress and the adoption of a panoply of corporate governance listing standards by the New York Stock Exchange, the NASDAQ, and the American Stock Exchange. Such regulatory responses have had a profound impact on the roles of the key corporate governance players, and they have set the wheel in motion for the continuing evolution of corporate governance practices.

Before delving into a discussion of the roles of the key players in corporate governance and how those roles are evolving, it is important to first set forth a working definition of the term “corporate governance.” Corporate governance is the set of laws, policies, and processes affecting the way a corporation is directed, administered, and controlled. It specifies the distribution of the rights, powers, and responsibilities among the different participants in the corporation, such as senior management, the board of directors, shareholders, and other stakeholders, and it sets forth the rules and procedures for making decisions on corporate matters. In doing so, it also provides the structure through which a corporation’s objectives, the means of attaining those objectives, and the monitoring of performance in connection with the attainment of those objectives are set.

The Key Players

There are three key corporate governance players: senior management, the board of directors, and shareholders. Senior management of a corporation is responsible for running the day-to-day business operations and informing the board of directors of the status of such operations. Senior management’s responsibilities include:
• Developing and, following approval by the board of directors, implementing strategic plans
• Developing and, following approval by the board of directors, operating within annual plans and budgets
• Maintaining an efficient and appropriate management and organizational structure
• Identifying and managing risks taken by the corporation
• Establishing internal controls to ensure accurate financial reporting and providing channels for reports of potential misconduct

The board of directors has the ultimate responsibility for the oversight of the corporation’s business and affairs. One of the most important oversight responsibilities of the board of directors is to monitor the senior management on behalf of the shareholders. These oversight responsibilities include:

• Selecting, determining the compensation of, and replacing, to the extent appropriate, senior management
• Overseeing the conduct of the corporation’s business to evaluate whether it is being properly run by senior management
• Reviewing and, where appropriate, approving financial objectives and major corporate plans and actions proposed by senior management

In connection with the performance of such oversight responsibilities, the members of the board of directors have certain duties under state law, the general notion of which is that they have a duty of care and a duty of loyalty to the corporation and its shareholders. Duty of care means they have to exercise the same care in terms of managing the corporation’s money as they would if they were managing their own money. Duty of loyalty means they have to always act in the best interests of the corporation and its shareholders (i.e., they must put the interests of the corporation and its shareholders ahead of their own personal interests in making business decisions on behalf of the corporation).

Obviously, the corporate governance process works the best when the
members of the board of directors are active and ask the right questions, when they make a concerted effort to figure out what is going on, and when they approve transactions based upon valid business reasons. If they do not ask the right questions, get the right answers, and approve transactions with a full knowledge of what is behind them, they may be held personally liable for their actions or inactions.

Shareholders are the owners of the corporation and, as a result, have a direct financial interest in the performance of the corporation. Thus, the senior management and the board of directors ultimately work for the benefit of the corporation’s shareholders.

Shareholders are granted special privileges depending on the class of stock they hold in the corporation, including the right to vote on matters such as elections of directors to the board of directors, the right to share in the distributions of the corporation’s income, and the right to the corporation’s assets upon the liquidation of the corporation. Importantly, shareholders are generally not empowered to initiate significant corporate plans and actions on behalf of the corporation, although such plans and actions may require shareholder approval.

Independent Directors and Committees

The common thread contained in both the Sarbanes-Oxley Act of 2002 and the corporate governance listing standards of the national securities exchanges is the empowerment of independent directors as well as committees of the board of directors composed entirely of independent directors. For example, the corporate governance listing standards of the New York Stock Exchange require that a majority of the directors on the board of directors of a listed company be “independent” and that listed companies maintain an audit committee, compensation committee, and nominating and corporate governance committee comprised solely of independent directors. The espoused benefits of having independent directors and board committees is to bring objectivity to decisions of the

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1 See Section 303A.02 of the New York Stock Exchange Listed Company Manual for the tests to apply in determining whether a director is independent.
board of directors and to empower individuals who will be in a position to act on behalf of shareholders. As a result, it is likely that independent directors and board committees will play an increasingly greater role in the governance of corporations.

**Shareholder Activists**

A shareholder activist uses its equity stake in a corporation to put pressure on the senior management. The goals of shareholder activists range from economic (e.g., improving shareholder returns through the divestiture of non-core assets, the sale of the corporation or changes in corporate policy) to non-economic (e.g., the adoption of socially responsible business practices or environmentally friendly policies). Shareholder activists believe certain corporate governance changes, such as those strengthening the accountability of senior management to shareholders, will have a positive long-term impact on corporations and their earnings. Shareholder activism can take any of the following forms:

**Proxy Contests**

Proxy contests occur when shareholder activists attempt to persuade the shareholders to use their proxy votes to elect the shareholder activists’ nominees to the board of directors, thereby gaining representation on the board of directors. Proxy contests have traditionally been an expensive undertaking, given that shareholder activists have had to prepare and mail their own proxy statements to shareholders. As a result, proxy contests were historically not frequently used by shareholder activists.

However, in light of the recent adoption of a new rule by the Securities and Exchange Commission (SEC) for the Internet availability of proxy statements, proxy contests are expected to become much more commonplace. (This new rule is commonly known as the “e-proxy rule.”) Pursuant to the new SEC rule, a shareholder activist may furnish proxy statements to shareholders through a “notice and access” model. A shareholder activist choosing to follow the model must post its proxy statement on a Web site and send a notice of the Internet availability of the proxy statement to shareholders. The shareholder activist must send a paper or e-mail copy of its proxy statement within three business days after
receiving a request from a shareholder. It may also opt not to send a notice of the Internet availability of the proxy statement to shareholders and limit its solicitation to shareholders who have not made a permanent election to receive all proxy statements in paper or by e-mail with respect to future proxy solicitations conducted by the corporation or the shareholder activist. This new alternative model for furnishing proxy statements seeks to provide shareholder activists with a more cost-effective means to undertake their own proxy solicitations.

**Shareholder Proposals**

Shareholder activists may use the SEC’s Rule 14a-8 to submit corporate governance-related shareholder proposals to corporations. Rule 14a-8 provides an opportunity for a shareholder owning a small amount of a corporation’s securities to have his or her proposal included in the corporation’s proxy statement for a vote at an annual or special meeting of shareholders (i.e., the corporation bears the burden and cost of preparing and mailing a proxy statement, which includes the shareholder activists’ proposal, to shareholders). The rule generally requires a corporation to include a shareholder proposal in its proxy statement, unless the shareholder has not complied with the rule’s eligibility/procedural requirements or the proposal falls within one of the rule’s thirteen substantive bases for excluding a proposal. The most important substantive bases for excluding a shareholder proposal include:

- **Personal grievance; special interest**: If the proposal relates to the redress of a personal claim or grievance against the corporation or any other person, or if it is designed to result in a benefit to a particular shareholder, or to further a personal interest, which is not shared by other shareholders at large.

- **Management functions**: If the proposal deals with a matter relating to the corporation’s ordinary business operations. This exclusion is intended to incorporate the state corporate law principles that the board of directors manages a corporation’s business and affairs and that the senior management of the corporation is responsible for
managing the corporation’s day-to-day business decisions. As a result of this exclusion, shareholder proposals are usually non-binding. Thus, even if an overwhelming number of shareholders support such a proposal, the board of directors may determine that it is not appropriate to implement it. There are very few types of shareholder proposals that can be binding on a corporation and its board of directors and management. Although the ability to submit binding shareholder proposals is still a matter of debate, it is generally acknowledged that certain bylaw amendment proposals (e.g., the implementation of a majority voting standard for the election of directors) should pass muster under state corporate law.

- **Relates to director elections**: If the proposal relates to an election for membership on the board of directors. This exclusion is intended to prohibit shareholder activists from using Rule 14a-8 to effectuate a proxy contest.

**Publicity Campaigns**

Shareholder activists may launch a publicity campaign to broaden shareholder awareness of alleged corporate governance lapses and “forcefully” persuade the senior management to correct such lapses.

**Negotiations with Senior Management**

Large institutional shareholders, such as the California Public Employees’ Retirement System, may attempt to use their significant share ownership in a corporation to change the corporation’s corporate governance practices through negotiations with senior management. Generally speaking, senior management is willing to sit down and discuss corporate governance issues with shareholders, particularly large shareholders. In fact, corporations are increasingly agreeing to make many corporate governance changes large shareholders request. They understand they need to make their major shareholders happy or such shareholders may pull their money out.
Litigation

When no agreement can be reached between shareholder activists and senior management, or if one side refuses to communicate with the other, the only recourse may be litigation. A recent example of litigation regarding a corporate governance matter is the lawsuit filed by the American Federation of State, County, and Municipal Employees (AFSCME), the largest union for workers in the public service, against American International Group (AIG). In late 2004, the AFSCME submitted a shareholder proposal pursuant to Rule 14a-8 to AIG requesting that AIG amend its bylaws to add a provision establishing procedures by which shareholders could nominate directors under certain circumstances (including that the shareholder or group of shareholders owns 3 percent or more of AIG’s stock for at least one year). AIG sought to exclude the proposal from its proxy statement under SEC Rule 14a-8 and requested that the staff of the SEC concur with its conclusion that it could exclude such a proposal from its proxy statement. The SEC agreed with AIG that it could properly exclude the proposal from its proxy statement under SEC Rule 14a-8 because the shareholder proposal related to the election of directors. The AFSCME filed a lawsuit in federal district court and sought a preliminary injunction ordering that its proposal be included in AIG’s proxy statement. The federal district court denied the AFSCME’s motion, and the AFSCME appealed.

The federal court of appeals reversed the lower court’s decision and determined that the proposal was improperly excluded from AIG’s proxy statement. Specifically, the federal court of appeals held that the exclusion for shareholder proposals relating to the election of directors pertains only to the nomination of a specific director candidate and not the process by which shareholders may nominate a director candidate.

Such a reversal potentially opens the door to the ability of shareholders to nominate their own slate of directors to serve on a board of directors through the use of the corporation’s proxy statement (something that is currently not permissible). The SEC recently attempted to address this issue in 2003 when it proposed a rule that would have given shareholders the ability to directly nominate directors for inclusion in a corporation’s proxy
statement. (This proposed rule is commonly referred to as the “shareholder access rule.”) Under the shareholder access rule, shareholders and shareholder groups that owned more than 5 percent of a corporation’s securities for at least two years would have been able to utilize the rule if one of two proposed triggers occurred.

One trigger would have been shareholder approval of a shareholder proposal to opt into the shareholder access rule, where the proposal was submitted by a 1 percent shareholder. The other trigger would have occurred if 35 percent of shareholders withheld votes for any particular director candidate. If either happened, the next year at the annual shareholders’ meeting, the corporation would be subject to the shareholder access rule in which the above-described 5 percent shareholder or group of shareholders could propose one candidate for election to the board of directors that the corporation would be required to include in its proxy statement. These rules were supported by many shareholder activists but generally opposed by corporations. The SEC ultimately decided not to take any further action with respect to the proposed shareholder access rule.

In light of the AFSCME decision, rumors have been circulating that the SEC may re-propose a modified version of its shareholder access rule. In this regard, the SEC issued a press release shortly after the AFSCME decision indicating that the staff of the SEC “will recommend an amendment to Rule 14a-8…concerning director nominations by shareholders.” The press release noted that “the staff proposal, still to be developed, will address issues raised by a decision of the U.S. Court of Appeals for the Second Circuit…” regarding the AFSCME and AIG matter. To date, the SEC has not yet issued such a proposal.

Shareholder activists have pushed, and are likely to continue to push, corporations to make some or all of the following corporate governance changes:

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Majority Voting Standard

To amend their bylaws to require that directors be elected by a majority of shares present in person or represented by proxy and entitled to vote at an annual or special meeting of shareholders. Historically, almost all directors of U.S. corporations have been elected using a “plurality” voting standard. Under such standard, only votes cast in favor of a director nominee have legal significance. Shareholder activists believe directors are less accountable to shareholders under the plurality voting standard and that a majority voting standard would make them more accountable.

Advisory Votes on Executive Pay

To adopt a policy that shareholders be given the opportunity at each annual meeting of shareholders to vote on an advisory resolution, to be proposed by senior management, to approve the compensation paid to senior management. Shareholder activists have been irked by excessive compensation packages for senior management, especially when the shareholders have not fared well.

Classified Boards of Directors

To eliminate the classification of their boards of directors (i.e., one-third elected one year, one-third the next year, and so on) and to require that all directors stand for election annually. Shareholder activists view classified boards of directors as contrary to shareholder democracy, serving no purpose other than to entrench the board of directors.

Poison Pills

To redeem or submit to a vote of shareholders the corporation’s “poison pill.” Poison pills are anti-takeover devices that can take many forms. In general, a poison pill is implemented by a corporation through the issuance of rights or options to existing shareholders to acquire a large number of new securities, usually common stock or preferred stock. These new rights usually allow holders (other than an acquirer) to convert the right or option into a large number of common shares if anyone acquires more than a set
amount of the corporation’s shares. This immediately dilutes the percentage of the corporation owned by the acquirer and makes it more expensive to acquire control of the corporation. Shareholder activists do not like poison pills, because they are adopted by boards of directors without shareholder approval and have the potential to entrench senior management.

The most important shareholder activists include:

**The California Public Employees’ Retirement System**

The California Public Employees’ Retirement System is the largest pension system in the United States. As of May of 2006, it held stocks and bonds valued at approximately $210 billion. Among other things, the group publishes an annual list of corporations that are both poor economic performers and lack good governance practices. Obviously, corporations are loathe to be identified on such a list.

**The Teachers Insurance and Annuity Association and College Retirement Equities Fund (TIAA-CREF)**

The TIAA-CREF forms the principal retirement system for the education and research communities in the United States. As of December of 2005, the TIAA-CREF’s assets totaled approximately $359.1 billion. Among other things, the TIAA-CREF publishes and periodically updates the “TIAA-CREF Policy Statement on Corporate Governance,” which outlines the principles it believes constitute good governance.

**Union Pension Funds**

Union pension funds have used Rule 14a-8 to submit a large number of corporate governance-related shareholder proposals to corporations. For example, the AFSCME pension fund submitted twenty-five shareholder proposals to corporations in 2006. Nine shareholder proposals were settled and withdrawn, meaning the corporations agreed to take action without a shareholder vote.
Hedge Funds

Hedge funds are the newest entrant to the shareholder activists club. The hedge fund “brand” of shareholder activism has been criticized due to its alleged focus on short-term objectives. To those who subscribe to this school of thought, a hedge fund will identify a corporation that is undervalued. It will then figure out how the market value of the corporation’s shares can be increased (e.g., through the sale of non-core assets and the distribution of the proceeds from such sale to shareholders). After this, it will slowly start to make purchases of the corporation’s shares on the open market. Once it has acquired a substantial equity stake in the corporation, it will start to demand that the corporation undertake certain steps to enhance shareholder value (e.g., to explore strategic alternatives, such as a sale of the corporation). The hedge fund will also make demands that the corporation undertake certain pro-shareholder corporate governance measures, the result of which is to ensure that institutional shareholders and other shareholders support the hedge fund vis-à-vis the senior management. If the senior management agrees to the demands made by the hedge fund (e.g., to sell certain assets), there will likely be a short-term increase in the market price of the shares of the corporation. At such time, the hedge fund will sell its shares into the market and receive the benefit of the “pop” in the price of the shares. However, hedge fund activism may not have any positive impact on long-term shareholder value.

Corporate Governance Interest Groups and Professional Associations

There are a number of important interest groups and professional associations for the key corporate governance players that have, and likely will continue to have, a significant impact in shaping how corporations are directed, administered, and controlled. In general, corporate governance interest groups attempt to encourage or prevent changes in public policy with respect to corporate governance matters. On the other hand, corporate governance professional associations exist to further a particular corporate governance-related profession, to protect both the public interest and the interests of the professionals.

With respect to senior management, the most influential corporate
governance interest group is the Business Roundtable, an association of chief executive officers of leading U.S. corporations. The current chairman of the Business Roundtable is Harold McGraw III, the chairman, president, and chief executive officer of the McGraw-Hill Companies. The Business Roundtable has ventured into the corporate governance arena many times over its long history, most recently with the publication of *Principles of Corporate Governance* in 2002. This publication was issued in response to the growing number of corporate scandals in the early 2000s. Many of the corporate governance principles advocated in the publication were subsequently seized upon by lawmakers and regulators, and they became part of the Sarbanes-Oxley Act of 2002 and the corporate governance listing standards of the national securities exchanges.

For example, the publication recommended that:

- A substantial majority of the board of directors of a publicly owned corporation should be independent of management, both in fact and appearance, as determined by the board of directors
- Every publicly owned corporation should have a corporate governance committee comprised solely of independent directors
- Every publicly owned corporation should have a compensation committee comprised solely of independent directors
- Every publicly owned corporation should have a code of ethics with effective reporting and enforcement mechanisms

All of these recommendations ultimately became part of the Sarbanes-Oxley Act of 2002 or the corporate governance listing standards of the national securities exchanges.

With respect to the board of directors, one of the most important corporate governance professional associations is the National Association of Corporate Directors, a non-profit organization dedicated exclusively to serving the corporate governance needs of directors and boards of directors. Its mission is to improve corporate governance through better board practice. The group provides continuing director education, benchmarking research in numerous board and committee practices,
thought leadership publications, and practical handbooks for boards of
directors and their committees. It is an indispensable resource for directors
and their legal advisors.

With respect to shareholders, one of the most vocal corporate governance
interest groups is the Council of Institutional Investors (CII), a non-profit
association of 130 public, labor, and corporate pension funds with assets
exceeding $3 trillion. The CII works to educate members and the public
about corporate governance, and to advocate for strong governance
standards on wide-ranging issues. In this regard, the CII is extremely active
in the public policy arena, testifying before Congress on corporate
governance matters and lobbying the SEC and the national securities
exchanges to adopt pro-shareholder corporate governance changes.

The vocal nature of the CII’s advocacy for pro-shareholder corporate
governance issues was demonstrated in mid-2006 when it sent letters to
1,500 public corporations requesting information regarding whether each
corporation engaged in stock option back-dating or timing, two issues that
stoked and continues to stoke the ire of shareholders. Stock option back-
dating is the granting of stock options as of a date in the past when the
actual grant did not occur until later, ensuring that the exercise prices of the
stock options are lower than the market price on the actual grant date.
Option timing occurs when a corporation grants options in anticipation of
“good news” or holds back the granting of options until after the
announcement of “bad news.” According to the CII, both practices
“undermine the purpose and the potential benefits of stock compensation”
(i.e., to incentivize the senior management and employees to increase the
corporation’s financial performance and, as a result, the value of its shares).3
The CII posted responses to its letters on its Web site.4

3 See CII letter dated September 8, 2006, to the chairman of the Senate Banking

4 See www.cii.org/backdating/letter_campaign/index.html.
Other Corporate Governance Players

There are a multitude of other players that impact corporate governance practices and are worth mentioning. These other players include:

- **Lawmakers and regulators**: As noted above, lawmakers, such as Congress, and regulators, such as the SEC and the national securities exchanges, have played, and will likely continue to play, a significant role in shaping corporate governance practices. It is clear that corporate governance practices would not have advanced so quickly in such a short period of time without the impetus from Congress, the SEC, and the national securities exchanges.

- **Proxy advisory firms**: Proxy voting is a significant responsibility of shareholders, including institutional shareholders such as mutual funds and pension funds. Increasingly, institutional shareholders are using proxy advisory firms, such as Institutional Shareholder Services and Glass Lewis & Co., to analyze proxy proposals and recommend how they should vote on such proposals. The importance of these proxy voting firms should not be underestimated. Without them, a management or shareholder proposal may fail to obtain the votes needed to pass.

- **Lawyers**: Lawyers who specialize in handling corporate governance matters advise different corporate participants (e.g., boards of directors, senior management, shareholders) on matters dealing with the governance of the corporation. Corporate governance lawyers play the critical role of counseling these corporate participants on how to comply with the “letter and spirit” of the law, whether in connection with strategic transactions, shareholder proposals, related-party transactions, director independence determinations, or executive compensation matters.

In connection with almost every corporate governance matter or dispute, there will be laws corporate participants will be required to comply with to achieve their sought-after goals. For example, if a shareholder owning a
small amount of a corporation’s securities wants to have his or her proposal included in a corporation’s proxy statement for a vote at an annual or special meeting of shareholders, the shareholder will have to comply with the procedural and substantive provisions contained in the SEC’s Rule 14a-8. If the management wants to pursue a strategic transaction, it may be required (under state corporate law or other laws, the organizational documents or policies of the corporation, or the continued listing requirements of the national securities exchange on which the corporation’s securities are traded) to obtain approval from the board of directors and/or shareholders. Thus, the role of lawyers involved in corporate governance matters or disputes is to aid corporate participants in successfully navigating their way through the applicable legal, regulatory, and compliance hurdles.

The Evolving Roles of the Key Players

Until the 1990s, corporate governance as we know it today did not really exist. Senior management would run their corporations without any significant “checks and balances.” If shareholders did not like what was going on, their only option was to sell their shares. The board of directors usually was not kept appraised of what was going on in terms of senior management decisions.

In response to the accounting scandals and other corporate malfeasance in the early 2000s (e.g., Enron, WorldCom, Tyco, Global Crossing, Adelphia, etc.), regulatory pressures pushed corporations to strengthen director independence and the oversight powers of their boards of directors. Such regulatory pressures, which included the Sarbanes-Oxley Act of 2002 and the corporate governance listing standards of the national securities exchanges, require independent committees of the board of directors to:

- Be responsible for the appointment, oversight, and compensation of the corporation’s independent registered public accounting firm
- Administer procedures for the receipt, retention, and treatment of auditing complaints
- Meet regularly in executive sessions without senior management
- Obtain and review reports prepared by the independent registered public accounting firm describing the corporation’s internal quality control procedures
- Discuss financial statements included in SEC filings with senior management and the independent registered public accounting firm
- Review and approve compensation paid to senior management
- Discuss earnings press releases and earnings guidance
- Identify director nominees and adopt corporate governance principles

Generally speaking, boards of directors are becoming more assertive in terms of the corporate governance process. For example, they increasingly request that management report to them before taking any corporate actions, because the board of directors is ultimately responsible for managing the corporation. Meetings of the board of directors are much longer now than was previously the case, because management is now required to spend more time with the directors and explain to them what is going on. Thus, the corporate governance balance of power has shifted, and will likely continue to shift, toward boards of directors, particularly independent directors and committees.

In the same way, the corporate governance pendulum appears to be swinging in favor of shareholders. Shareholders are demanding and receiving increased input into the election of those individuals who are supposed to be in a position to best protect their interests: independent directors. This movement seemed to gain a full head of steam in 2003 when the SEC proposed the shareholder access rule. However, after strong opposition to the proposed rule from business groups such as the Business Roundtable and the U.S. Chamber of Commerce, the SEC decided to shelve the proposal.

Not content with having no real ability to influence director elections, shareholder activists set their sights on the plurality voting system that was prevalent at most U.S. corporations. Under such a system, the only votes that count in connection with the election of directors are the votes cast in favor of the nominee set forth in the corporation’s proxy statement. As a
result, shareholder activists set out on a crusade to force corporations to adopt a majority voting standard.

Shareholder activist AFSCME was the first to venture into this foray when it submitted a binding shareholder proposal to Paychex Inc. that would have required Paychex’s board of directors to amend the company’s bylaws to require that directors be elected by a majority of the shares present in person or represented by proxy. Although the proposal was ultimately voted down by Paychex shareholders, it set in motion a chain of events that would eventually result in the voluntary adoption of some form of majority voting by approximately 200 corporations. With the newly adopted e-proxy rule and the anticipated re-proposal of the shareholder access rules by the SEC, the trend towards greater empowerment of shareholders is likely to continue.

It is too early to tell whether these two shifts in the balance of corporate governance power away from senior management and towards boards of directors and shareholders will have the intended impact of ensuring that the corporate failures that occurred in the early 2000s do not repeat themselves. What is clear is that the seismic shifts in corporate governance we have witnessed over the last twenty years or so will likely continue into the foreseeable future.

Harry S. Pangas regularly advises operating and investment companies on all aspects of the rules and regulations of the Securities and Exchange Commission, including disclosure, Rule 144A, Regulation G, short-swing profit rules, the Investment Company Act, Regulation FD, shareholder proposals under Rule 14a-8, and insider trading plans. In particular, he has developed a niche practice representing closed-end investment companies that have elected to be regulated as business development companies under the Investment Company Act. He also has represented clients in connection with a variety of corporate transactional matters, including public and private equity and debt offerings, mergers, acquisitions, dispositions, and other strategic transactions.

Mr. Pangas has extensive corporate governance-related experience and regularly advises operating and investment companies on the Sarbanes-Oxley Act of 2002 and the corporate governance listing standards of the New York Stock Exchange, the
Mr. Pangas previously worked in the division of corporation finance at the Securities and Exchange Commission in Washington, D.C., and he was a member of the division’s shareholder proposal task force.
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