Corporate Governance: Failures, Successes, and the Impetus for, and Impact of, Change

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Columbia Business School

Ira M. Millstein and Holly J. Gregory
Office: Millstein Center for Global Markets and Corporate Ownership
435 West 116th Street, Room 536
Phone: 212-854-2595, 212-310-8000 (Weil, Gotshal & Manges LLP)
E-mail: ira.millstein@weil.com; holly.gregory@weil.com

Teaching Assistant: Colleen Honigsberg
E-mail: CHonigsberg16@gsb.columbia.edu

Class: B9301 Section 182
Time: T/Th 2:15 PM – 3:45 PM
Room: URI 332

The governance of the public corporation is under a variety of pressures: new regulations enacted in reaction to the financial crisis; dramatic changes in corporate ownership from the classic Berle & Means model of dispersed ownership to concentrated holding in the hands of a range of financial intermediaries (with varied incentives, agendas and strategies to fuel both their own growth and gains for their beneficiaries); the related rise of shareholder activism and the growth of proxy advisors; and general changing expectations about the role of the board in relation to both shareholders and management. Together, these pressures present a challenge to those seeking to manage and direct the affairs of the corporation. This course aims to explore failures and successes in corporate governance and how those failures and successes are impacted by the changing dynamics described above.

This six week course will be taught by Ira M. Millstein, Lecturer-in-Law and Co-Chair, Millstein Center for Global Markets and Corporate Ownership Columbia Law School, and Holly J. Gregory, Partner in the corporate governance practice of Weil, Gotshal & Manges LLP, with a variety of guest lecturers, case study presentations and class discussion. Readings will be supplied in a course pack. A high level of class participation is expected. Class size is limited to 30.

SECTION I: THE ELEMENTS OF CORPORATE GOVERNANCE IN THE NEW CAPITAL MARKETS

1. History, Structure, and Objectives of the Corporation (September 3)

Assigned Readings:
- American Law Institute, The Objective and Conduct of the Business Corporation. 2.01, p 55-76 in Volume 1, Principles of Corporate Governance (1994) (Note: ignore “illustration” sections).
Optional Readings:

2. Legal and Regulatory Restraints (September 5)

Assigned Readings:

Optional Readings:

3. The Role and Responsibilities of the Board of Directors (September 10)

Guest Lecturer: Bill McCracken, President, Executive Consulting Group; Former Chairman and Chief Executive Officer, CA, Inc.

Assigned Readings:

Optional Readings:
- Weil, Gotshal & Manges LLP, Board of Director Composition and Governance Requirements (2013) (for reference purposes only).

4. The New Capital Markets and Shareholder Diversity (September 12)

Guest Lecturer: Robert J. Jackson, Jr., Associate Professor of Law and Milton Handler Fellow, Columbia Law School; co-Faculty Director, Millstein Center for Global Markets and Corporate Ownership

Assigned Readings:
Optional Readings:
- OECD, The Role of Private Pools of Capital in Corporate Governance: Summary and Main Findings About the Role of Private Equity Firms and “Activist” Hedge Funds (2007).

5. Corporate Responsibility and “Doing the Right Thing” (September 17)
Guest Lecturer: David Miller, Director, Princeton University Faith & Work Initiative

Assigned Readings:

Optional Readings:

II: EXAMINATION OF GOVERNANCE FAILURES

6. The Recent Financial Crisis and How We Got Here (September 19)
Guest Lecturer: Jim Millstein, Founder and Principal, Millstein & Co.; Former Chief Restructuring Officer, U.S. Treasury

Assigned Readings:

Optional Readings:
- Chairman Ben S. Bernanke, address at the Federal Reserve Bank of Kansas City, Jackson Hole, Wyoming (August 21, 2009).

7. Failure of Watchdogs?: Regulation and Credit Ratings (September 24)
Guest Lecturer: Harvey Goldschmid, Dwight Professor of Law, Columbia Law School; Former Commissioner, SEC

Assigned Readings:
- J. Coffee, Jr., Turmoil in the U.S. Credit Markets: The Role of the Credit Rating Agencies Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs, 110th Cong. (2008)
8. **Reviewing the Fix: Dodd-Frank and Corporate Governance (September 26)**

**Assigned Readings:**
- Dodd-Frank Wall Street Reform and Consumer Protection Act at http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf (Governance Sections/Readings TBD)
- Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Roles & Responsibilities, p 1-3, 21-26 (August 1, 2009)

9. **Failure of Incentives?: Executive Compensation (October 1)**

**Guest Lecturer:** Wendy E. Lane, Chairman of Lane Holdings, Inc.; Board of Directors, LabCorp; Chair of the Compensation Committee and member of the Executive and Audit Committees, Willis Group Holdings; Board of Directors and member of the Audit Committee, UPM-Kymmene

**Assigned Readings:**
- Dodd-Frank Wall Street Reform and Consumer Protection Act, Accountability and Executive Compensation, Title IX, Subsection E, Section 951-957 (2010).

10. **Failure of Oversight?: The Role of the Board of Directors (October 3)**

**Guest Lecturer:** Peggy Foran, Chief Governance Officer, Vice President, and Corporate Secretary, Prudential

**Assigned Readings:**
- American Bar Association, Corporate Director’s Guidebook, 6th Edition, Section 3: Responsibilities, Rights, and Duties of a Corporate Director” p 11-33 (see assigned pages for session 3)

11. **Failure of Ownership?: Rights & Role of Shareholders (October 8)**

**Guest Lecturer:** Donna F. Anderson, CFA Vice President and Global Corporate Governance Analyst T. Rowe Price

**Assigned Readings:**
- B. Heineman and S. Davis, Are Institutional Investors Part of the Problem or Part of the Solution?: Key Descriptive and Prescriptive Questions About Shareholders’ Role in U.S. Public Equity Markets, CED and Millstein Center, p 1-6, (October 2011).

12. **Governance Successes and the Role of Best Practice (October 10)**

**Assigned Readings:**
- Review of GE Governance Principles practices (see previous materials Cl. 3)
GRADING/EVALUATION

Grading / Evaluation will be based on:

- Class Participation (20%)
- Three (3) Reaction Papers of 4-5 pages, based on any lectures of choice and accompanying materials (80%)

**Reaction Papers Due One Week From Lecture Date**