Good Corporate Governance Drives Shareholder Value:
The Corporate Governance Workshop for Large Institutional Investors

hosted by
The Center for Corporate Governance, Tuck School of Business,
and
Norges Bank Investment Management (NBIM)

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1. Introduction

When a hotshot executive is carted off to prison for living high on the hog at the shareholder's expense, everyone applauds and cheers "serves 'em right." But this is a loser's game for all sides, says John Wilcox, senior vice-president and head of corporate governance for TIAA-CREFF. A winner's game is preventing any digression in the first place. If executives really want to pad their pockets, they ought to champion good corporate governance because that's what increases shareholder value in economically significant terms; and happy owners means better compensation packages and job security for CEOs. There is historical evidence that proves good corporate governance boosts shareholder value. There are academic studies that prove it empirically. And there is current research that is confirming it.

All of this evidence was recently presented at the Corporate Governance Workshop for Large Institutional Investors, hosted by the Tuck School's Center for Corporate Governance and Norges Bank Investment Management (NBIM), on October 8 and 9, 2007. Guest lecturers included a dozen experts from the United States and Europe who spoke before institutional investors representing 2 trillion (!) dollars in assets. After two days of lectures and open debate, a poignant conclusion emerged: Corporate governance not only drives shareholder value in significant monetary terms, but also the evolution of the financial markets. If CEOs, board members, and shareholders have not already awoken to this evidence, they had best take note and then take action.

In his opening remarks, Professor B. Espen Eckbo, founder and director of the Center of Corporate Governance at Tuck, made clear why the workshop was catered to large institutional investors: they are the watchdogs with the power to effect change in governance. To illustrate his point he invoked a Mark Twain maxim: "If you are going to put all your eggs in one basket, you'd better watch that basket!" Ultimately, it is the large pension fund managers who will watch that basket for the little shareholders, because they have far more at stake and a long-term view not compromised by short-term pressures to meet earnings estimates.

So, the trillion-dollar question: how can institutional investors influence corporate governance in a meaningful way? At the conference the attendees provided the answer, which includes proven solutions, but not before they discussed why governance is so vital, how fragile individual integrity truly is, and the nature of misconduct today.

To begin, it's important to recognize that for each individual governance means something different. "Everyone has their own ideas," says Linda Selback, of Wellington Management, an asset management firm for institutions. Wilcox agrees; it can be difficult to define good governance; however, he pointed out metaphorically that when the Supreme Court was addressing a pornography case, one of the justices stated that he can't define pornography, but he knows it when he sees it.

To put it in a basic, universal framework, the corporate governance system is a "set of mechanisms to control conflicts of interest and opportunities for expropriation," Eckbo says. Absolutely vital, these mechanisms protect against "asset transfers and stripping; dilution via new equity issues; overpaying executives; bribes;" among other transgressions. And these mechanisms are desperately needed because there is a correlation between the disintegration of governance and the disintegration of financial markets, which naturally extends to the destruction of shareholder value.

2. Integrity reduces risk

Regardless of whatever laws or regulations are in place, individuals still make bad choices that lead to a serious financial downside for shareholders and markets. Pontificating about the debauched and depraved behavior of executives at Enron, Tyco, Worldcom, and Adelphia, among so many others, can be wearisome; yet, when exploring the crux of good governance there is the unavoidable notion of integrity.

For two years now Michael C. Jensen, Jesse Isidor Straus Professor of Business Administration, Emeritus, Harvard Business School, has been working on integrity's role on a number of levels. In his mind, integrity is as important as capital, but has been ignored. "Integrity is a necessary but not sufficient condition for long run value maximization," he says. It is as positively linked to investment decisions as the net present value cycle, according to Jensen.

To illustrate how fragile integrity is, how easily individuals will turn to lying, cheating, and stealing, Jensen experimented on students in his Harvard leadership class. They had to agree to a set of rules by which to operate that he would then monitor for infractions; after just two days, an astounding 97% of the students had violated the rules. And this group is supposedly "the cream of the crop," Jensen laments. In the real world this translates to managers who "treat their firm's relationship with capital markets as a game." The game can result in CEOs manipulating their companies' earnings and stock prices.

Earnings manipulation is pervasive, Jensen says, and referred to the Graham, Harvey and Rajgopal 2005 survey of 401 executives, in which 78% of those surveyed admitted that they were "willing to knowingly sacrifice value to smooth earnings." Not so coincidentally, the percentage of firms meeting or beating analysts' forecasts has increased steadily since the early 1990s. Taking a tough stand, Jensen declares that the term "manage earnings" is akin to "lying." The problem is that honest business people are so accustomed to the notion of "managing" it doesn't occur to them that they're actually "lying." Jensen's charge is to "put integrity back into the system," and boards must take the lead and be held accountable for the financial consequences of not doing so.

3. The rise of self-dealing

As we know, laws don't always dissuade executives from pillaging their own company; nevertheless, understanding the role law plays in regulating corporate behavior is crucial to investors. Andrei Shleifer, professor of economics at Harvard University, has been tackling corporate governance issues from a legal angle; specifically, the "role of law in constraining manager misconduct."

Over the last twenty years, according to Shleifer, the focus on misconduct has shifted to the ability of executives to divert corporate wealth and resources to themselves, otherwise called self-dealing or tunneling. The current debate centers on how a respective nation's origins of laws – common laws inherited from the United Kingdom versus civil laws from France, for example – explain differences in controlling self-dealing versus "alternative explanations" that "include culture, the media, and politics."

To gauge the effectiveness of self-dealing regulation and accompanying factors by country, Shleifer recruited the help of nine law firms to design a simple business transaction that involved self-dealing and an accompanying questionnaire, which was then distributed to over 100 law firms representing 72 countries or 99.3% of the market capitalization in 2003. The transaction involved a majority shareholder (Mr. James) in two companies having one company buy equipment at a premium from the other. The law firms' answers regarding various regulations governing and potential legal consequences of the fictional transaction would then provide information Shleifer required to develop "a measure of investor protection."

Through analysis of the answers and creating a series of indices, Shleifer was able to draw a number of country specific conclusions to help guide corporate governance. Ultimately, he discovered that the United Kingdom's legal and regulatory system, based on the common law, is the best for the control of self-dealing. This is due to the fact that before the hypothetical equipment deal could be made in the U.K., full disclosure is required on the part of the buyer and

Mr. James, and it must be submitted to an independent review - no other country requires all three prerequisites. In addition, given a scenario in which the transaction is disclosed after the fact, Shleifer discovered that there is a greater ease of proving wrongdoing and holding Mr. James liable in the U.K. (and the U.S. in this case), which also acts as a deterrent to self-dealing.

He was also able to make some general observations and conclusions: common law countries better protect investors; contract rights and disclosure laws vary by country; and the legal system has a clear role to play as those countries with less corrupt judiciaries have more developed financial markets. Providing an impetus for reform, Shleifer concluded that the U.K. model should guide reform in other countries and more disclosure should lead to a higher level of financial development, including greater IPO activity and shareholder benefits.

4. Executive compensation and wage clarity

Another component of self-dealing that is more likely to make the headlines than equipment sales is excessive executive compensation. The heated debate surrounding compensation has been beat into the ground with little progress as pay packages continue to soar. Eckbo admits he's not sure what the solution to executive compensation is. If it is indeed market driven – a matter of supply and demand - then that's ok. Regardless, two issues still warrant close scrutiny: the transparency of the pay package; and the independence of the compensation committee.

Eckbo noted that even Christopher Cox, chairman of the SEC, said, "The debate is not about wage controls. It is about wage clarity - information that is clear, complete and comprehensible." There is strong support for the new SEC guidelines for executive compensation, which have expanded the disclosures companies must make, in particular, as related to pay benchmarks, performance targets, and disparity in pay between certain executives. In the push for greater transparency, Wilcox also believes that executives have an obligation "to explain how the compensation plan will drive the business."

As for compensation committees, it's a matter of how independent they are, how willing they are to tell an executive enough is enough. Jensen asked conference attendees to imagine what it's like to be a human resources officer or lawyer negotiating the salary of your future boss with that future boss. You're naturally inclined to be generous – if you want to keep your job.

5. Bonus plans inspire lies

When it comes to traditional performance-based bonus plans, Jensen argues that they should be eliminated all together because such plans "incent you to lie." He explained that bosses will have a tendency to lie about how good you can do, thus raising the bar; while managers will tend to lie in order to lower their targets. Jensen believes that productivity would actually be increased dramatically over the long-term if shortsighted bonus plans were eliminated; however, such plans are so ingrained in our corporate culture, that it's difficult to do away with them. The same can be said for rewards based on stock price.

Through his research, Jensen's comprehensive solution to fixing bonuses and options includes in part a number of components:

- eliminate bonuses based on performance targets from budget or prior-year performance;
- measure performance in dollars, and include a charge for capital;
- increase the 'incentive zone' by eliminating caps (and floors?); linear plans are best;
- replace executive stock options with cost-of-capital indexed options to avoid rewarding managers for destroying value.

6. Staggered boards depress shareholder value

Company boards of directors loaded with insiders is an obvious impediment to not only reforming compensation but governance in general. Lucian S. Bebchuk, professor of law, economics, and finance at Harvard, believes that staggered boards and poison pills are two critical elements that need to be forcibly addressed. Most important, he brought to light evidence that staggered boards depress shareholder value.

Regardless of this fact, according to information gathered in 2006, 49% of the S&P 500 firms still had staggered boards. Consequently, there is a growing shareholder opposition to staggered boards, which begs the question: Why do they remain so prevalent? Because the board structure is built into the corporate charter, Bebchuk explains. The board itself needs to initiate a charter amendment and then seek shareholder approval.

More poignant, many executives resist change because staggered boards are a “powerful tool against takeovers that have shareholder support.” Invariably, executives are able to maintain enough allies on a staggered board to thwart takeover attempts. A hostile takeover attempt might realize success once all board members have been replaced, but that could take two years, by which time the financial dynamics would most likely have changed considerably.

To curtail entrenchment and boost shareholder value, Bebchuk recommends an election every two years for the entire slate of board members to clean house. To support his argument, he pointed to the fact that staggered boards are associated with a lower firm value, a Tobin’s Q that is 17 points lower than firms without such boards. There is more compelling empirical support for change: When firms do announce that they are going to a full slate board election, they add 1.82% to their value, which is a healthy boost any investor would take. And consider that an increase in shareholder activism includes hostile takeovers, LBOs, and recapitalization, Eckbo observed, which produce large excess returns for shareholders.

7. A poison pill antidote

As with staggered boards, the basic argument for reforming laws on poison pills is that this device suppresses the respective company’s value; after all, shareholders benefit from takeovers that buy stock at a premium. With shareholder rights limited and legally binding laws required to effect change, Bebchuk has attempted to come at the problem with a pragmatic approach. He has designed a poison pill bylaw – a poison pill antidote – that limits the indefinite use of this takeover defense.

He is a proponent of allowing a company to use a poison pill for a limited period – up to 6 months, for example – which would give the company and shareholders adequate time to properly evaluate a takeover bid. Even though he believes a year is too long, another option he suggests is that boards must review a poison pill once a year and re-approve it. Another possible bylaw component he has championed is one that requires a unanimous vote by the board both to adopt a pill and to extend it after the annual review. He conceded that a unanimous vote is too excessive for executives and boards to accept, so he is willing to entertain an 80% vote.

Bebchuk has been very proactive in taking his case to corporations, with some success. Bristol-Myers Squibb agreed to adopt his bylaw; Disney adopted a similar, lesser version; and CA adopted a different version, after Bebchuk successfully took the company to court to get his bylaw proposal on the ballot.

Outside of the U.S., Bebchuk pointed to the United Kingdom as a good model, as had Shleifer in discussing self-dealing. There, poison pills are rare and it's easier for shareholders to replace entire boards even if they are staggered through what amounts to a no confidence vote.

8. Shareholder voting: International roadblocks

In addition to staggered boards, entrenched executives, and a host of tactics to keep shareholders at bay, investors face another significant hurdle to governance reform: impediments to the voting process itself. In an age of globalization, it is particularly important to understand how the voting process works internationally: the legal and practical aspects; the hindrances to efficiency; and how hindrances affect the balance of power and hurt the shareholder franchise.

To explore these issues, Espen Eckbo and Giulia Paone of the Tuck Center for Corporate Governance and Runa Urheim of NBIM have been working on a collaborative research project. Their work is especially poignant to large institutional investors such as NBIM, which invests in some 40 markets. The voting process is complicated because each country has its own system and regulatory agencies that require constant monitoring. Primary concerns of shareholders vary by country, too, which means an international investor must be well versed in a host of issues. For example, board independence and pay-for-performance incentive plans are global issues; while the poison pill dilemma is largely restricted to the U.S., France, and Japan; and a lack of information on board candidates is a problem in European and Asian countries.

In a tight battle over governance reform every vote counts, so no votes, lost votes, and over voting can all have a real impact. Of particular concern in the U.S., Paone says, is the right of stockbrokers to "cast votes for shareholders on 'routine' matters." This rule is critical because the vote for board members has traditionally been considered routine. However, the make-up of the board is far from routine for the growing army of active shareholders. Still, any change to the broker vote regulations will be highly controversial, according to Bob Pozen, of MFS Investment Management, because it could dramatically change the balance of power. Those shares held by apathetic individuals might not get voted, therefore institutional investors and activist hedge funds will have more power. Wilcox believes voting behavior needs further analysis to understand how individuals would react before changes are recommended.

9. Complex Voting Chain

On an international level, there are other impediments affecting the balance of power; namely, cross-border voting road blocks that result in uneven shareholder representation. Cross-border voting is increasingly an area of focus in governance as globalization spreads and foreign ownership increases. In studying share ownership structure in Europe, Paone et. al. discovered that 33% are foreign investors, so imagine situations where a third of the investors face serious hurdles to casting their vote?

One of the major impediments is a complex, time-consuming voting chain with multiple layers that can require proxy votes to travel through local and global custodians, an investment manager, and a registrar. Votes can be easily lost and short deadlines lead to rejected late votes. In some countries votes cannot be cast unless the investor is present at the general meeting; however, foreign investors can face complex admission criteria and may still see their votes rejected. Share trading is another factor that effects voting rights through sudden power shifts, and because regulations can vary widely by country it is ripe for reform and some standardization. Another kink in the chain, according to Arthur Lindenauer, of Tuck, is the oligopoly of proxy services in Europe, a powerful group of firms that make it difficult to effect change.

Once votes have been cast, virtually no country provide an audit of the votes. Adding some wry humor, Eckbo quoted Joseph Stalin: "What matters is not how people vote, but who counts them."

To make the process more efficient and fair, the voting chain needs to be simplified. A possible course of action is to have the Central Securities Depository (CSD) licensed as a national central depository in each country so that investors can hold their shares directly in a CSD account, thus cutting out a custodial layer in the voting chain. Norway has an effective direct holding system that serves as an excellent model. However, each country would have to be evaluated before pushing for this model because some countries' CSDs can be characterized as "sketchy."

Reform in the voting process will not be easy, Paone admits, because it's difficult getting reliable information pertaining to the process from some countries. However, several recurring themes clearly need to be addressed: international harmonization or a more standardized process; better voting instructions and audit trail; internet voting to cut time and chain layers; better regulation of stock lending, short selling, over voting and blocking votes. Marcel Jeucken, of PGGM Investments, advocates a proactive approach that includes meetings with all voting chain members to talk about inefficiencies.

10. ESG and Financial Risk

The need for better governance extends beyond traditional issues, says Raj Thamotheram, senior advisor to Universities Superannuation Scheme (USS Ltd) and current chairman of the Institutional Investors Group of Climate Change. Now it should routinely include the extra-financial, or the environmental, social, governance (ESG).

Thamotheram strongly believes that governance extends to assessing the impact of business on climate change, for example; a topic anathema to many CEOs. To put the controversial debate into concrete economic terms, he referred to a 2006 article in the *Financial Times*, quoting: “Current policies will lead to the risk of the global economy shrinking by between 5-20%. Taking action now to reduce carbon emissions would cost (up to) 1% of the global economic output by 2050.” The economic and shareholder cost of delaying action is potentially significant.

To contend with complex economic and governance issues such as climate change, he believes academics are key to developing new mental models; and empirical evidence will change our way of thinking. More and better research is needed in the area of corporate governance’s relationship with social and environmental issues. In particular, Thamotheram wants the U.S. to fund more research. Academics need to provide real answers, not just theories, he warns, to be effective. But this is a sensitive concept because academics telling practitioners how to do their job can be met with resistance.

11. Socially responsible investment (SRI): Equal or better returns?

Demonstrating the compelling nature of empirical evidence, Thamotheram then reviewed studies that have explored the performance of "socially responsible" corporations. There is a preconception that socially responsible firms pay a monetary cost that impacts shareholder value negatively. They do not, he asserts. A number of studies demonstrate that in the U.K., as well as in the U.S., equity socially responsible investment (SRI) funds do not "perform better or worse than mainstream investments." Some studies have even shown that "there is a positive association, and certainly very little evidence of a negative association, between a company's social performance and its corporate financial performance." A 2005 study by Derwall, Guenster, Bauer, Koedijk concluded that a "portfolio with highly ranked eco-efficiency provided substantially higher average returns than its low-ranked counterpart over the 1995-2003 period."

However, a recent study by Dartmouth professors Karin Thorburn, Associate Director of Tuck's Center for Corporate Governance, and Karen Fisher-Vanden, show that the stock market punished close to 100 publicly traded U.S. companies when they voluntary made investments in technologies to reduce greenhouse gas emissions. If that's the story, board members can ill afford to make such investments, and it won't help that some large institutional shareholders are demanding that they do. In the end, what may be needed is government regulations to solve the very problems the SRI movement is addressing.

Nevertheless, responsible investment is gaining traction, and Thamotheram promotes collaborative action among institutional investors to have greater influence on corporate leadership. Toward that end, he is working with asset owners and fund managers representing $10 trillion to promulgate Principles of Responsible Investing (PRI), which include incorporating ESG issues into investment analysis and decision-making processes; seeking appropriate disclosure on ESG issues by the entities in which the institutions invest; and reporting on activities and progress; among other initiatives.

12. Ethics: Inside or outside the box?

Responding to Thamotheram's argument, Henrik Syse, who is head of corporate governance for NBIM, asks, "Should 'ethical issues' be part of corporate governance engagement?" Syse believes that "a number of 'ethical issues' must be raised as part of our mandate and our fiduciary duty, because the risk of not doing so is too great." He stresses that the discussion is "not about right or wrong, good or evil."

Syse also reminds us that we share "universal ownership" of outside forces like the environment that impact everyone. Good ethics also legitimize the markets and strengthen the markets' ability to handle negative events. Rather than being disingenuous about ethics driving investment decisions, Syse argues that there is a "need to recognize that human beings customarily act from more motivations than just one." In other words, individuals are not driven by just dollars.

13. Realities of putting ESG into practice

Faced with heated debate and the potential of entrenched opposition, what are the realities of putting ESG into practice? Paul Munn, of Hermes Equity Ownership Services, acknowledges putting such ESG initiatives on the ballot for a proxy vote is difficult. Aggressive campaigns or protest doesn't work, he warns. To make ESG discussion more palatable to corporations, he doesn't talk about governance; instead he uses language like "responsible investment" and persuasive arguments about positive change. Focus on risk and reward, he says, to establish a common language with executives and to make it difficult for companies "to duck issues."

Munn discussed an example in which Hermes approached a tobacco company about leaving North Korea due to the country's regime. Hermes asked them direct questions about the company's return on capital and then the reputation risks of operating in North Korea. The answers made it self-evident that the company was destroying shareholder value by being there. The intersection of communication with the firm was financial – those are the buttons to push.

If Hermes can add a few basis points to their returns by investing in companies with good governance, Munn says, then Hermes's governance group more than pays for itself. And it's important to note that Hermes' "ultimate goal is to outperform the market, which it has done for over 10 years."

14. Screening companies

To prevent scenarios in which divestiture may be necessary, Hermes focuses on screening firms before investing by studying not just financial information, but the Tobin Q and measures of ESG. TIAA-CREFF also screens companies diligently for specific issues, says Wilcox. The pension fund has a basic checklist of questions concerning tobacco, armaments, labor and human rights policies, and the environment, among others. In addition, the fund brings in former CEOs as consultants so TIAA-CREFF gets the inside scoop on any games companies might play. This screening by large investors can influence governance, he believes, because companies naturally will make changes to attract those investors.

Regrettably not all pension funds screen, and, as Eckbo pointed out, mutual funds are much less active. Mutual funds view governance oversight as an unnecessary expense, a position Wilcox calls nonsense. As with Hermes, TIAA-CREFF's budget is nominal and pays for itself as the organization targets companies likely to yield better long-term returns through good governance.

15. Escalating engagement

Once an investment has been made, if there is a particular governance issue that warrants attention, TIAA-CREFF will use the power of the pen and their collective member's voice in what Wilcox labels "escalating engagement."

The escalation begins with TIAA-CREFF writing a letter to the company outlining their position and desired changes. Depending on the situation, letters may be sent to executives, directors, and appropriate committee chairs. If the company does not respond, the fund's next step is to hold an advisory vote, in which TIAA-CREFF members vote on a resolution dealing with the specific issue. If approved, the resolution is then taken to the targeted company. If the company agrees to act on it then TIAA-CREFF takes the resolution off the table and agrees to make no public mention of the action; otherwise, it is submitted as a proxy vote for all shareholders. Wilcox believes this form of escalation campaign has been very successful, due, in part, to TIAA-CREFF keeping the advisory vote resolutions private – the companies respond better when public chastisement is not threatened.

16. A success story in Canada

A particularly successful shareholder activist is the Canadian Ontario Teachers' Pension Plan (OTPP); however, the fund's governance expert Claude Lamoureux cautions against being religious about it. He takes a guarded view on how effective investors can be in fomenting change. Can one shareholder or one institutional investor have an impact? Lamoureux asks bluntly. He thinks not, because "companies don't listen to your concerns that greatly."

One of the first steps in creating change, he says, is to impart knowledge to other owners in a collaborative effort. A solution the OTPP has undertaken is to post on the internet how the fund will vote ahead of time to generate interest and discussion. The newspapers tend to pick it up too, which brings free publicity.

To encourage collaboration among institutional investors, several years ago the OTTP decided to help organize a meeting to discuss governance. Many did not attend because they are afraid to confront corporations, says Lamoureux, even though these investors are making $100 million decisions. Initially 15 came together and subsequently formed the Canadian Coalition for

Good Governance (C2G2) which is now 48 members strong and represents about $1.3 trillion of assets. Members include pension funds, mutual funds, and money managers.

The coalition has enjoyed several significant accomplishments with Canadian companies. It succeeded in achieving separation of chair and CEO, which has allowed CEOs to focus more on daily operations and the chair more on governance. The group has also convinced some 80 companies to allow shareholders to vote for directors one-by-one instead of the entire slate, which helps control entrenchment and weed out poor directors. Stock option accounting is now required so investors are fully informed as to what executives are receiving; and companies have to disclose whom it hires as compensation consultants, which has led to greater transparency. And to better evaluate companies, the coalition has created a governance score.

Lamoureux did not have the same kind words for the U.S.-based Council of Institutional Investors, which is clearly not as active. On a global level, he believes that the International Corporate Governance Network has an opportunity to be effective; however, the network needs a permanent staff, support from pension funds, and “to define what it wants to do.” Lamoureux also says all institutional investors need better advisors who are without conflicts of interest.

17. Divestment: A case study

So how accurate is Lamoureux’s downbeat opinion that one institutional investor cannot influence a company? An ideal case study that answers that question is Norway’s Government Pension Fund’s decision to divest its position in Wal-Mart in June 2006 due to what they judged to be systematic violations of human rights and labor rights based on standards set by the International Labour Organization. Before the final decision to divest was made, a letter expressing Norway’s position was sent to Wal-Mart. The company never responded, which, Bob Pozen put kindly, was a “very bad non-action on their part.” Needless to say, NBIM, which manages the fund, acted on the divestment request.

So, did Wal-Mart executives react positively and make changes? Did the company's stock take a hit? Did regulatory agencies step in? There was no impact on its stock price, according to Pozen, who studied the case extensively, nor on its sales revenue in Europe. While there was a burst of bad press, any reputation damage was apparently negligible because Wal-Mart was already tainted by labor abuse accusations. The Swedish pension fund, Andra AP-fonden, did follow Norway in divesting, but again, with no impact on Wal-Mart's stock. The only real accomplishment of the divesting was the respective funds protecting their own reputation by no longer being complicit in abuses. Clearly, it will indeed take a number of institutions in collaboration to sway corporate behavior.

18. Human rights and financial risk

Henrik Syse, of NBIM, believes firmly in engagement versus divesting, and is not shy about exercising ownership rights. To be effective, NBIM picks areas of governance in which to focus, become experts in, and have influence. The focus currently includes child labor and children's rights. In evaluating the murky area of human rights, NBIM studies international norms and the legal framework, as well as the behavior of their peer institutional investors. International norms include what Syse calls "norm –driven consequences" of corporate behavior, such as publicity, boycotts, and regulatory intervention. The legal framework with which investors should be familiar is built around the Alien Tort Claims Act that has been used recently to sue transnational corporations for violations of international law. And finally, to keep abreast of issues and remain competitive, NBIM pays attention to how its peers are treating human rights issues.

Syse believes that NBIM is more engaged than many other institutions because the firm is serious about collecting evidence related to specific governance issues that can then be used to influence peers. The burden of proof is on NBIM to show how their work has an impact, especially if they suggest such strong action as divestiture.

19. The road forward – action items

To effect positive change in corporate governance, Eckbo's top priority is "a forum for ongoing discussions among institutional investors" which may help guide each investor's voting behavior He believes at least 15 or so institutions need to agree on the issues to pack real punch when it comes to influencing executives and boards. Thamotheram agrees that institutional investors are "missing a trick" by not sending a joined message – a sentiment echoed repeatedly during the conference. Lamoureux's work with C2G2 and Thamotheram's work with Institutional Investors Group of Climate Change prove that the power of organizations representing trillions of investment dollars can be harnessed. However, they must be sensitive to how hard they can push and pick their battles, with divestment being a last option. These institutions must find a common language based on real financial risks and rewards in their discussion with corporations because CEOs are gun shy of talk about ESG.

From the conference lectures and open debate, it is clear that corporate governance reform needs to push forward on all fronts: on high-level issues like independent boards and shareholder rights; on legal and regulatory grounds that control self-dealing and the fairness of the voting process; and on research to help the investment community get a better handle on shareholder voting behavior, environmental risks, and the correlation between good governance and shareholder value. The academics need to continue to take the lead on research and in creating frameworks for how to best think about governance.

In striving for the ideal, it is apparent that the United Kingdom provides an excellent model for regulating self-dealing and disclosure; the Norwegian government and NBIM exemplify socially responsible investment; and Canada's C2G2 demonstrates how real change can happen. These models are worth investigating further and emulating, but to various degrees because it's recognized that one system does not fit all.

Shareholder activism is here to stay and the onus is on executives and boards to respond. In summarizing the current relationship between executives and shareholders, Wilcox says that if a company treated customers the way they treat shareholders, they would be bankrupt. Executives seem to forget that "when you are a public company you agree to certain rules of operation because investors own you." CEOs must view themselves in a stewardship role, according to Wilcox, not as rock stars. As stewards they must adopt principles of good governance to drive shareholder value over the long-term.