

SHAREHOLDER DEMOCRACY: ITS PROMISES AND PERILS

November 18, 2005
(9:00 a.m. to 5:00 p.m.)

at
Columbia Law School
435 West 116th Street, New York, New York

Co-sponsored by:
Columbia Law School Center on Corporate Governance
and
UCLA-Sloan Research Program on Business Organizations

Business scandals have provoked a sense of crisis in Corporate America. Increasing shareholder power is a common response – in both the media and new regulation – reflecting the view that corporations are better managed if shareholders play a greater role in controlling corporate excess. But does that answer raise its own set of problems?

This symposium will focus on the growing role of shareholders in managing public corporations, bringing together prominent academics, policymakers, shareholder representatives, executives, corporate lawyers, business leaders, and reporters to explore in depth the idea of “shareholder democracy” and its costs and benefits.

Traditionally, legal scholarship on corporate governance has focused on how corporations deal with the problems of agency costs in public firms. Increasing shareholder power may be an effective way to reduce those costs. That focus has led to the acceptance of a “shareholder primacy” paradigm that presumes that corporations are run most efficiently when they are run in accordance with shareholder desires.

Nevertheless, academics have begun to explore alternatives to the traditional principal-agent approach. Those alternatives reveal how the principal-agent model fails to address other important economic problems in corporations, including important problems that may be worsened by enhancing shareholder power.

The principal-agent model, for example, presumes that shareholders in public firms have a single common interest. Shareholders in public corporations, however, are a diverse group whose interests often conflict depending on whether they are short-term or long-term investors, whether they are diversified, whether they play other roles in the firm (e.g., as employees or creditors), whether they have “social” preferences or purely economic preferences, and whether they have hedged their economic interest through derivatives contracts. Increasing shareholder power heightens the resulting potential for intra-shareholder conflict. A second failing of the principal-agent model is that it overlooks the importance of firm-specific investments made by stakeholder groups like employees and customers, who can become residual claimants in corporations with interests and vulnerabilities that are economically similar to shareholders. Third, the principal-agent model ignores the problems of negative spillover effects from corporate activities on broader society, assuming instead that they can be controlled through contract and government regulation. If not true, then greater shareholder power can lead to more “socially irresponsible” corporate behavior.

The question of whether greater shareholder power benefits or harms public corporations is far more complex and nuanced than the current tone of debate suggests. We anticipate an exciting day as participants take a new look at the role of shareholder democracy in the modern corporation.

PRELIMINARY SYMPOSIUM SCHEDULE AND PARTICIPANTS:

Friday, November 18, 2005

9:00 a.m. - 9:15 a.m. **Welcome**

9:15 a.m. - 10:30 a.m. **First Principles: Where Do Shareholders Fit In?**

Moderator: Lynn Stout, UCLA School of Law

Speakers: Lucian Bebchuk, Harvard Law School
Margaret Blair, Vanderbilt Law School
Martin Lipton, Wachtell, Lipton, Rosen & Katz
Patrick McGurn, Institutional Shareholder Services
Hon. Leo Strine, Delaware Court of Chancery

10:30 a.m. - 12:00 p.m. **Shareholders v. Stakeholders and the Corporate Responsibility Debate**

Moderator: Merritt Fox, Columbia Law School

Speakers: Einer Elhauge, Harvard Law School
Jill Fisch, Fordham Law School
Terence Gallagher, Corporate Governance Associates
Marjorie Knowles, TIAA CREF
Damon Silvers, AFL-CIO
Timothy Smith, Walden Asset Management

12:00 p.m. - 1:30 p.m. **Lunch**

1:30 p.m. - 2:45 p.m. **Intershareholder Conflicts and the Role of Hedge Funds and Pension Funds**

Moderator: Jeffrey Gordon, Columbia Law School

Speakers: Iman Anabtawi, UCLA School of Law
Frank Partnoy, University of San Diego School of Law
Edward Rock, University of Pennsylvania School of Law
Eric Roiter, Fidelity Management and Research Inc.
Steven Wallman, FOLIO*fn*

2:45 p.m. - 3:45 p.m.

Comparative Perspectives

Moderator: Charles Whitehead, Columbia Law School

Speakers: Brian Cheffins, Cambridge University
John Coffee, Columbia Law School
Curtis Milhaupt, Columbia Law School
Hiroyuki Mitsuishi, JETRO New York

3:45 p.m. - 5:00 p.m.

Summing Up: Shareholder Power and Corporate Reform

Moderator: John Coffee, Columbia Law School

Speakers: William Anderson, Goldman, Sachs & Co.
Ronald Gilson, Columbia Law School
Michael Masin, O'Melveny & Myers
Hon. Annette Nazareth, U.S. Securities and Exchange
Commission
Lynn Stout, UCLA School of Law

FURTHER INFORMATION AND TO REGISTER:

By Friday, November 11, 2005, please contact --

Thelma Twyman
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Please include your contact information and also indicate whether you wish to receive CLE credit.

For directions to the Law School (Jerome Greene Hall), please refer to:

http://www.columbia.edu/about_columbia/map/index.html