LATHAM & WATKINS LLP

Corporate Governance Commentary

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# The Parallel Universes of Institutional Investing and Institutional Voting

## Highlights

- Institutional voting of portfolio stocks, for the most part, is no longer in the hands of institutional money managers, except for votes with clear economic significance (such as mergers or election contests).
- In their place, the vast majority of institutional investors has delegated voting decisions to a separate internal voting function or have outsourced voting decisions to third-party proxy advisory firms.
- As a result, institutional investor votes are largely determined by one-size-fits-all voting policies based on perceived corporate governance best practices, without reference to the particulars of each company's situation. While rare exceptions are made, the default position is determined by voting policies developed either internally by a specialized corporate governance function, or, in a large number of situations, externally by outside proxy advisory firms.
- The implications of the parallel universes of investment decision makers and voting decision makers include:
  - The need to develop parallel systems to communicate with the two very different constituencies, recognizing that each constituency is interested in and responsive to different subjects and, quite frequently, different types of communication.
  - The imperative for public companies to adjust to the reality and viewpoint of the parallel universe of voting decision making.
  - The corresponding need for corporate governance specialists to move to a more nuanced application of corporate governance principles that addresses the legitimate need for variation in corporate governance specifics in the context of more than 10,000 public companies in the US.

## The Dichotomy between Institutional Investing and Institutional Voting

Over the past 30 years, institutional investing and institutional voting of portfolio shares have separated to the point that in most institutions the persons charged with making investment decisions have relatively little or no responsibility for voting the institution's portfolio shares. While this is not universally the case, it is by far the prevailing paradigm. It has become rare for those charged with making investment decisions to buy or sell stock also to be important players in the share voting process.[1]

The reasons for the divorce of investing and voting at institutional investors are:

- The law of large numbers (too many portfolio companies with too many ballot votes at annual shareholder meetings), and
- Two seminal decisions by government agencies that regulate our institutional investor community — the US Securities and Exchange Commission (SEC) and the US Department of Labor in its administration of ERISA.

In the mid-1980s, the Department of Labor issued an opinion that, under ERISA, parties responsible for managing assets in ERISA-governed pension plans have the fiduciary duty not only to vote all of their portfolio shares, but also to do so in accordance with a "prudent man" standard.[2] Not long thereafter, the SEC Division of Investment Management issued a similar ruling that the fiduciary obligations of registered investment advisors include voting all shares held in managed portfolios in accordance with the fiduciary duties of loyalty and care.[3]

These two rulings had the effect of rendering obsolete the traditional philosophy of the investment management industry that, if there was no problem with a portfolio company's management, it was OK to vote management's recommendations; if there was a problem, the solution was to sell the stock (the so-called "Wall Street Walk"[4]) rather than to hold the stock and use its voting power to try to effect change. While the Wall Street Walk may continue to be the preferred answer of the investment management industry to an underperforming management, automatically voting management's positions is clearly no longer acceptable.

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The SEC and ERISA rulings demand that, instead of passive adherence to management's voting recommendations, each institutional investor vote all of its portfolio shares on every matter brought to shareholders in accordance with the standards of the proverbial prudent man in like circumstances. The rulings do not, however, explain or even acknowledge:

- The immensity of the burden being created in light of the number of companies represented in an institutional investor's portfolio, particularly at medium and large investment management complexes, nor
- The disconnect, so to speak, for quantitative investment advisers that buy and sell stocks based on computer models, not on individualized analysis of company performance, nor
- The correlative cost burden being imposed on the investment management industry for a goal that those responsible for investment decisions (whether active managers or quantitative managers) undoubtedly view as being largely bereft of benefit to the value of their portfolios.

The upshot of the rulings has been the creation of several "outsourcing" strategies for investment managers to meet their recently imposed fiduciary duty at bearable expense.

- One model is to subscribe to services provided by proxy advisory firms (today, principally Risk Metrics, Glass Lewis and Proxy Governance), ranging from outsourcing the mechanics for actually voting shares (a not insignificant logistical and cost issue if the investment manager's portfolio includes hundreds or thousands of companies), to making recommendations on how to vote all portfolio companies' shares on all matters brought to shareholder meetings, to exercising discretionary proxy authority to vote the portfolio companies' shares without reference to the investment manager.

- To make this model work, the proxy advisory firms, in turn, have developed methodologies to recommend voting positions for all public companies on all ballot matters, as well as systems for electronic voting that are used to cast votes on behalf of participating institutions, thus becoming the repository for the problems and costs associated with the law of large numbers arising from annual (or more frequent) shareholder meetings at over 10,000 public US companies.
- The proxy advisory firms' methodology for recommending voting positions in a manner intended to satisfy the fiduciary prudent man standard consists of an increasingly complex set of voting policies designed to cover every vote on every shareholder meeting ballot. Application of those policies is routinized and implemented by a combination of computer systems and a low cost labor source that has the capability of linking the voting policies to the actual ballot issues, as presented in each company's proxy materials.[5]

- A second model adopted by many investment managers (particularly larger managers) has been to internalize development and implementation of voting policies through creation of an internal staff dedicated to voting all portfolio companies' shares. The internal "corporate governance" staff typically is entirely separate from the portfolio managers and reports either to the general counsel or senior compliance officer of the investment manager, not to the investing function.
- Many investment managers have chosen a hybrid model that combines some of the features of the first two models.
    - For example, they may utilize some or all of the services offered by proxy advisory firms, including voting recommendation services, but rely on the institution's internal corporate governance staff for final voting decisions on some or all ballot issues.
    - Other institutions use internal staff for administrative functions but as a matter of formal policy or informal practice follow the voting recommendations of third-party proxy advisors.
    - Some investment managers, particularly those utilizing active rather than quantitative portfolio management strategies, may also follow the practice of informing portfolio managers of proposed voting decisions for the managers' portfolio companies and permit, or (in a relatively small number of cases) encourage, portfolio managers to review voting decisions and register any contrary views on the proposed votes.
    - The latter structure is far more common on ballot issues that have an obvious impact on valuation, such as control contests and mergers.
- Ironically, all of these structures effectively replicate the old days of the Wall Street Walk, except that instead of voting in favor of all management recommendations on non-economic matters, the institutions now vote the recommendations of internal or external corporate governance specialists. This, as a practical matter simply entails application of the relevant voting policies without any reference to the specific facts and circumstances of the portfolio company the shares of which are being voted.[6]

In short, institutional investors have found a range of cost-effective solutions to the challenges imposed by application of fiduciary duty standards to voting decisions. The solutions have several critical points in common:

- Application of data management principles to the vast bulk of proxy votes cast each year.[7]
- Creation and implementation of effective and comprehensive default rules (in the form of voting policies) for making ballot decisions, which do not require human intervention.
- Use of a small infrastructure of corporate governance managers to supervise a largely automated voting process, who have the authority to set the default voting rules and to make exceptions in specific cases that are "appealed" by the portfolio company, by the proponent of a shareholder proposal or by internal portfolio managers.
    - It is important to recognize that this essentially default structure exists at both proxy advisory firms and at institutional investors who have not outsourced their entire voting system to a proxy advisory firm and that the structure is necessary to control the cost of the voting system.

- One key difference between the internalized and externalized default to universally applicable voting policies is that companies typically find it easier to get a meaningful hearing on a request for an exception to a voting policy at institutions that have internalized the process than at third-party proxy advisory services.

- Absence of a role for persons with authority and responsibility for making investment decisions, except that some institutions provide investment decision makers with a "back seat" review function or authority to make voting decisions on clearly economic issues, like control contests and mergers.

## The Role of Corporate Governance in Institutional Voting

By design, those charged with voting decisions at investment management firms and proxy advisory firms do not have the resources, and very often lack the training, to take into account the particulars of each company for which they have voting authority. At best, they may rely on statistical modeling in an effort to sort portfolio companies by performance, such as grading a company against a peer group determined by SIC codes or the like. At worst, they do not make any inquiry into company performance measures. Similarly, voting recommendations on executive compensation and benefit issues are made on the basis of generic models that do not take into account the particular circumstances of any particular company or the wealth of reasonable choices among compensation policies and practices. Voting decision makers do not and cannot utilize the tools of investment decision makers because it is simply not feasible to do so in the cost environment in which proxy advisors and internal corporate governance staffs are required to operate.

Instead of replicating investment decision making and inhabiting the world of financial and market driven analysis and valuation, the voting decision makers utilize a philosophically different decisional system that focuses almost exclusively on corporate governance.[8] The voting decision makers — the corporate governance officers at institutional investors and their counterparts at proxy advisory firms — function in the universe of corporate governance, a universe that may be analogized to a separate, parallel universe from that of the investment decision makers. This is not to say that voting decision makers ignore corporate performance as the end goal, but only that in their parallel universe good corporate governance promotes good corporate performance and therefore is a justifiable and desirable end in itself.[9] No further inquiry into the effect any particular corporate governance initiative might have in the context of a company's particular circumstances is necessary or relevant.

By way of example, in the parallel universe of corporate governance, institutional investors would vote to require that Berkshire Hathaway have an independent, non-executive chairman of the board in place of Warren Buffet, its current Chairman, because Mr. Buffet is also the CEO and is not independent of management and there is no lead independent director or similar position on the board. Similarly, if Mr. Buffet were to serve on a compensation committee that awarded "excessive" compensation according to a corporate governance model, in the universe of corporate governance he would be subjected to a "withhold" vote recommendation without regard to the positive attributes he might otherwise bring to the board or the positive contributions he would make to the company's performance.

The end result is that economic ownership and economic decision making have been effectively decoupled from voting decisions throughout most of the investment management world.[10] This is certainly true with proxy advisory services (whose recommendations are dispositive for many institutional investors and highly influential for others). As a practical matter, it is also true at the majority of institutional investors, which control the costs of voting by delegating the function to a small cadre of governance specialists and largely or entirely disassociate portfolio managers from the process.[11]

**"The point of this commentary is not to pass judgment on the merits of our current institutional voting system, but rather to understand it and to begin to plumb its implications."**

## Implications of the Parallel Universe of Institutional Investor Voting

The point of this commentary is not to pass judgment on the merits of our current institutional voting system, but rather to understand it and to begin to plumb its implications.

- Like it or not, short of some major changes in law and practice, the parallel universes of investment decision making and voting decision making are here to stay. One reason is that it is far from clear how the situation could be changed.
  - One possibility would be to reverse the fiduciary rulings of the Department of Labor and SEC. However, there is little to be said for reverting to the old model of institutions (and retail investors through their brokers) voting for management's recommendations unless they are displeased enough to sell the stock.
  - A second solution would be to accept that shareholder voting on non-economic issues is of little or no interest to investors of all stripes. This conclusion, however, logically would lead to an elimination of the bulk of all shareholder votes. While such a decision would save forests by eliminating the need for most proxy material, it runs counter to our deeply held association of shareholder voting and corporate legitimacy. Put simply, do we dare say out loud that our Emperor—shareholder democracy— has no clothes?
  - A third possibility would be to regulate proxy advisors and subject them to a fiduciary obligation to their clients (or perhaps to the providers of the funds invested by their clients) in the hope that this would produce better internal methodologies and more nuanced recommendations. It is not clear, however, that such a solution, standing on its own, would have much impact because all voting decisions at institutions, internal or external, would presumably continue to be driven by elaborate voting policies applied to most or all ballot proposals, without regard to the particulars of the companies or issues involved.
  - From a policy perspective, there is no obvious solution to the conundrum created by the law of large numbers and a voting standard based on fiduciary duty principles, short of explicitly and authoritatively providing that fiduciary duty principles require consideration of company particulars. Such a result would resolve the current dilemma, but at the cost of imposing greater cost on the institutional voting system. [12]
- For clarity, if for no other reason, we should stop referring to institutional investors as a single entity for all purposes. When the SEC refers to investors, it should consider being more specific about which group it means — the investment decision makers within the institutional investor community or the voting decision makers. The same is true for all other participants in the public company world, including the financial press, the legal and accounting communities, and commentators and academics. When, for example, the SEC analyzes comment letters it receives on proposals to reform or enhance disclosure of a company's performance and cites views of investors, it probably is referring to the investment decision making community and not the corporate governance community. By the same token, the seemingly endless debate about proxy access doesn't involve investment decision makers but rather is the province of voting decision makers.
- For better or worse, the corporate governance community (particularly its activist component) is in the midst of a (to date) successful campaign to change the composition and role of the public company board. The "trustee" model of a effectively self-perpetuating board that operates to advance shareholder interests, subject principally to fiduciary duty standards and obligations, is slowly being changed through corporate governance reforms (such as majority voting, the practical demise of Rule 452, elimination of staggered boards and a combined CEO/Chairmen role, and the seemingly inevitable advent of proxy access) into an assembly of annually elected representatives who are directly accountable to their electorate — the corporate governance community that makes voting decisions for the bulk of institutional investors.
- Finally, not all public companies have come to grips with the reality that, because they are owned, in a meaningful sense, by two very different institutional constituencies with different agendas, they need to engage in constructive and separate dialogues with each constituency.

- Public companies have long understood the need and desirability of communicating with investment decision makers. Indeed, our federal and state disclosure systems, the lawyers and accountants who serve it, and the internal and external investor relations and public relations functions have long focused on and tried to respond to this need. While this is well and good, it is not sufficient.
- Those companies that have not yet done so should accept the need and desirability of establishing separate, parallel communication channels and specialists to deal with voting decision makers at institutional investors and their proxy advisers. [13] Too often, corporate governance issues are seen as a distraction from a company's goal of creating economic value for its shareowners. Although this may be true, it is also somewhat beside the point because voting decision makers at the company's institutional shareowners demand otherwise.
- By the same token, the corporate governance community should recognize that it does not need and should not want to talk to the operating and financial management of a company because the voting decision makers are, by design, not involved with measuring the company's operating and financial performance.
- In effect, the division of labor on the institutional investor side suggests a similar division of labor on the company side, with company governance officers communicating with the voting decision makers and operating and financial officers communicating with investment decision makers. [14]
- In addition, both the corporate community and the governance community need to find a mutually successful resolution to another challenging aspect of the current corporate governance movement — its seeming drive to find new faults with the prevailing paradigm of corporate governance that, at least from the company perspective, makes any attempt at accommodation merely a prelude to another round of demands. [15] Communication and dialog imply a willingness to listen to the other side and to recognize legitimate arguments and explanations. Just as a company response of always saying "no" is not conducive to dialogue and understanding, a corporate governance position that is not responsive to company particulars is not likely to produce constructive discussion.

- Over the past 20 years or so, the focus on the strategic function of boards of public companies has arguably become secondary to the "monitoring" aspect of boards. [16] For public company boards to function optimally and to achieve their ultimate purpose of assisting in value creation for shareholders, these functions need to be balanced. An important part of this rebalancing for public companies and their boards is to find a constructive *modus vivendi* with the parallel universe of corporate governance and voting decision makers. By the same token, the ultimate challenge for the corporate governance constituency is to find a practicable way to create sufficient flexibility in their voting policies to accommodate legitimately different situations at their public portfolio companies that make application of rigid, *a priori* voting policies inappropriate and sometimes value destroying.

This *Commentary* is also available at Social Science Research Network (SSRN). Click **here** to view.

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**Endnotes**

[1] So-called "event driven" hedge funds and similar activist investors are an exception to this generalization about the separation of investing and voting decision making at institutional investors. Rather, activist investors frequently rely on the threat or actuality of share voting to implement their investment theses, such as revamping management or the board, or causing the company to undertake a transformative transaction, such as a recapitalization or sale. Accordingly, investment decision makers are also voting decision makers in the activist investor community.

[2] *See* Letter from U.S. Dep't of Labor to Helmuth Fandl, Chairman of Retirement Board, Avon Products, Inc. (Feb. 23, 1988); *see also* 73 Fed. Reg. 61731 (Oct. 17, 2008).

[3] For a recent restatement of this policy, *see* Proxy Voting by Investment Advisors, 68 Fed. Reg. 6585 (Feb. 7, 2003) ("The duty of care requires an adviser with proxy voting authority to monitor corporate events and to vote the proxies. To satisfy its duty of loyalty, the adviser must cast the proxy votes in a manner consistent with the best interest of its client and must not subrogate client interests to its own" (*internal citations omitted*)). The SEC also requires registered management investment companies to disclose the specific proxy votes they cast at shareholder meetings of their portfolio companies. *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, 68 Fed. Reg. 6564 (Feb. 7, 2003).

[4] Critics of the Wall Street Walk philosophy commonly point to index and other quantitatively managed funds that cannot engage in the practice because of their investment thesis. However, efficient market theory posits that the actions of actively managed funds will be reflected in the price of badly managed company shares (as would be the case for all other under-performers), which in turn will be reflected in the weighting accorded to those shares in quantitative models. Under this view, the inability of quantitative investors to react to bad management by selling shares will be compensated for by the overall market's reaction to that fact.

[5] It is not clear that a one-size-fits-all model of universally applied voting policies satisfies a fiduciary duty of care. At least the question can be asked whether the hypothetical prudent investor would neglect to consider the particular facts and circumstances of each company before applying a generic voting policy. For a good summary of institutional voting policies, particularly with respect to the role of proxy advisory firms, *see* The Society of Corporate Secretaries and Governance Professionals and the National Investor Relations Institute, "Proxy Advisory Services: The Need for More Regulatory Oversight and Transparency," submitted to the Securities and Exchange Commission, Discussion Draft, March 4, 2010 *available at* http://www.governanceprofessionals.org/society/Default.asp (the Proxy Advisory Services White Paper).

[6] Many retail investors also historically "outsourced" their votes on most ballot issues by not voting and thereby defaulting to broker discretionary voting under NYSE Rule 452. However, as Rule 452 has come under attack from corporate governance activists and has been reduced in scope, retail investors have not had the practical ability to outsource their votes to third parties. The result has been a drop in voting by retail holders. Retail investors generally do not seem to have much more interest in non-economic ballot matters than institutional money managers, suggesting that efforts to re-invigorate retail voting will be difficult absent creation of a default voting system to replace broker discretionary voting. This, of course, is one of the key purposes of the recent groundswell to develop so-called "client directed voting," which would allow retail holders to select a default voting pattern (*e.g.*, to vote for or against management's recommendations or to vote in proportion to all other shareholders) on all ballot matters for which the holders do not respond with specific voting instructions.

[7] As noted earlier, votes on issues with clear economic implications, such as M&A transactions and control contests, are a common exception, particularly among institutions using an active investment style. It is interesting that proxy advisory firms also make recommendations on these transactions, but specifically on a case-by-case basis. Proxy advisory recommendations on these matters are very influential on how institutions, particularly those utilizing quantitative investment styles, vote on such matters.

[8] It is not important whether the existence of corporate governance as a basis for voting decisions facilitated the outsourcing of voting decisions by investment decision makers, or whether the need to rationalize outsourcing of voting decisions led to the creation of a corporate governance methodology or whether both arose serendipitously at the same time. What is important is the symbiotic relationship of outsourced voting and the growth of the modern corporate governance movement.

[9] The premise that good corporate governance creates shareholder value is not clearly supported by the academic literature. *See* Sanjai Bhagat *et al., The Promise and Peril of Corporate Governance Indices*, 108 Colum. L. Rev. 1803 (2008) (arguing that there is no consistent relation between particular governance measures and corporate performance); *see also* Daines *et al., Rating the Ratings: How Good are Commercial Governance Ratings*, Working Paper, September 4, 2009, *available at* http://ssrn.com/abstract=1152093; *see also* Richard Leblanc & James Gillies, Inside the Boardroom: How Boards Really Work and the Coming Revolution in Corporate Governance, pp. 62-63, 80, 107-108, 120-126 (2005); *id*. at p. 125 ("where independent governance [is] clearly of superior benefit to shareholders, we would expect to see the results reflected in the results of scholarly research. Such results, however, are not evident. Other studies of the relationship between board size and firm performance provide no consensus about the direction of the relationship and suggest there is no statistical evidence of a relationship between corporate performance and proportion of outside directors of a board" (*internal citations omitted*); *id*. at p. 125 ("for every company that one can quote as an example demonstrating a positive correlation between good corporate governance, as defined by board structure, and good corporate financial performance, another that followed very good corporate governance practices can be found with a negative relationship"); Jeffrey Sonnenfeld, *Good Governance and the Misleading Myths of Bad Metrics, available at* http://www.sec.gov/spotlight/dir-nominations/sonnenfeld012004.pdf ("we are finding no support for a relationship between structural dimensions of board governance and company performance").

[10] Not to belabor the point, the major exception, most commonly for actively managed portfolios, is voting on matters that clearly affect value, such as mergers, acquisitions, sales and board control contests.

[11] This analysis raises the interesting question whether proxy advisory, as well perhaps as most institutional investor voting is a form of "empty" voting. The conventional definition of empty voting is where the person with voting power doesn't also own an economic interest in the shares. Using this definition, the proxy advisory firms, when voting a discretionary proxy of an institutional investor, are empty voters. This has been recognized by Professors Hu and Black in their analyses, as well as by Vice Chancellor Leo E. Strine, Jr. *See* Henry T.C. Hu & Bernard S. Black, *Equity and Debt Decoupling and Empty Voting II: Importance and Extensions*, 156 U. Pa. L. Rev. 625 (2008); Leo E. Strine, Jr., *The Delaware Way: How We Do Corporate Law and Some of the Challenges We (and Europe) Face*, 30 Del. J. Corp. L. 673 (2005). Interestingly, neither the Professors nor the Vice Chancellor seem to have carried their analysis into the dichotomy between investing and voting that is so prevalent within so much of the institutional investor community. One reason may be that institutional investors own the shares they vote, and there is no legal separation of votes and economic interests. On the other hand, on a practical level, the structural and philosophical separation of investment decision makers and voting decision makers within an investment adviser creates what could be characterized as a form of empty voting. Another example of the confusion created by assuming that an institutional investor is a unitary, monolithic entity is that

Professors Hu and Black distinguish the empty voting nature of proxy advisory firms from other forms of empty voting by noting that proxy advisory firms "are empty voters only at the sufferance of their principals", seemingly without recognizing that the principals in this case (the voting decision makers within an institution) may likewise be viewed as empty voters. Hu & Black, *Equity and Debt*, at 640. One empty voter acting at the sufferance of a second empty voter, a full voter does not make.

[12] This effectively is the position taken by the Proxy Advisory Services White Paper, *supra* n. 5, in particular at Recommendations 3, 4 and 5.

[13] Most companies that have recognized the desirability of establishing a separate line of communications with voting decision makers have delegated the function to either the general counsel's office or the corporate secretary's office (which supplies the corporate governance expertise), typically in partnership with the investor and public relations functions and human resources with respect to executive compensation issues.

[14] We leave to another day the practical details of the corporate governance dialogue, including such questions as whether and when directors should participate in governance discussions, the appropriate scope and focus of the discussions, their purpose and their frequency. Moreover, we note that the communications challenges facing a public company are more complex than successfully engaging in parallel dialogues with investing decision makers and voting decision makers at institutional investors. There is a third key shareholder constituency — retail investors. Effective communication with retail shareholders may be more difficult than with the bifurcated institutional shareholder community. First, the prevalence of street name ownership by retail holders and the insulation provided by the SEC's OBO/NOBO rules make identification and direct communication between a company and its retail owners challenging, and some would say unattainable. (For a description of the NOBO/OBO rules and their workings, see Alan L. Beller and Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting,* Council of Institutional Investors (February 2010), *available at* http://www.cii.org. Moreover, even assuming a reform of the OBO/NOBO system to facilitate identification and direct communication, it is not clear that retail holders have a greater desire than institutional investment decision makers to vote their shares, except indirectly through a Wall Street Walk. Finally, the SEC disclosure regime is so complex that it is hard to believe that a retail holder who wanted to could make her way through a 2010 proxy statement or Form 10K. To be effective, companies would have to create entirely new communication tools that would substitute on a practical level for the avalanche of information and detail that comprises corporate disclosure under the SEC's current model.

[15] A cynical view of the process would attribute the seemingly unending ratcheting of corporate governance best practices to a need by the leaders of the corporate governance community to continue to be relevant. An even more cynical view would start with the observation that corporate governance activists are dominated by labor and conclude that many corporate governance activists have an "unspoken" agenda to drive the US version of capitalism to a more labor-friendly, statist regime along the lines of continental Europe.

[16] Leblanc & Gillies, *supra* note 9, at 80. The strategic function refers to the board's role in setting basic policy and strategic direction for a company — what many observers believe is the most important contribution a board can make to value creation. The monitoring function refers to the board's role in actively supervising risk management, executive compensation and accounting, legal and regulatory compliance, illustrated by the enhanced roles and increased visibility of audit committees, whistleblower mechanics, governance committees, compensation committees and the like.

If you have any questions regarding this *Commentary*, please contact the Latham & Watkins LLP attorneys listed below or the Latham attorney with whom you normally consult.

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