Corporate Governance – Law and Business

New York University

Syllabus

MGMT-GB.3318.30/LAW-LW.10042.001

Term: Spring 2018

Dates: February 7 – May 2 (No class March 14)

Meeting Times: Wednesday, 6:10 – 9:10 pm

Classroom: Vanderbilt Hall Room 216

Professors: Karen Brenner / Helen Scott

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Office Hours: By appointment

Teaching Assistant:

Email:

Course Objectives:

This section of Corporate Governance includes faculty and students from both the Stern School of Business and the NYU School of Law. The objective is to facilitate professional interaction and joint work between students from both schools.

The emphasis in this course is on the interdisciplinary legal and business aspects of corporate governance. The dominance of the corporation in the modern economy has brought enormous challenges for civil society and for the boards of directors charged with overseeing the corporation’s affairs. The purpose of this course is to examine the role of the corporation in society; the evolution of US corporate governance standards; the structure, makeup, priorities and culture of boards; shareholder and stakeholder engagement, including shareholder activism; international governance; and corporate citizenship.

Course Description:

This course focuses primarily on for-profit, publicly traded corporations. Students are challenged to understand the system and structure in which corporations function and to think critically about the
framework for effective corporate governance. This will include an understanding of the structural relationships determining authority and responsibility for the corporation and their associated complexities. Students will be assigned foundational readings and cases associated with each topic and will be asked to examine issues from both legal and business perspectives.

Readings:

Readings are available as follows:

- NYU Classes site under “Resources”
- Course Pack which may be purchased at the NYU Bookstore (726 Broadway)

Grading:

The weights for the student’s overall grade are:

- Class participation 25%
- Three short papers 30%
- Individual company presentation 10%
- Team project/presentation 35%

(No more than 35% of the students will receive a grade of A or A-)

Class participation:

Your obligation in this course is to prepare for class discussion by thorough reading and analysis of the assigned material before each class. Readings and case discussions are an essential part of the course. All students are responsible for being prepared to discuss all of the study questions before coming to class. The instructor will ask students to present the assigned materials as a basis for discussion.

Short Papers:

Each student should prepare a written analysis of one study question from three different classes. The course requirement is to complete three short papers during the semester. The papers must be submitted on NYU Classes before the class addresses the topic in class. These analyses should be 3-4 pages in length (typed and double-spaced). The papers will be evaluated based upon the systematic and thorough application of the relevant concepts addressed in the readings. The papers are due on or before Sessions 3, 5, and 8.

Individual Company Presentation:

Within the first two weeks of class, each student is to select a public company, traded on the US markets, to follow throughout the semester. The teaching assistant must approve the company you select within the first two-week period. No more than two students may cover the same company. The presentation is to be 5 minutes and may, but is not required to, include slides. If slides are to be used
please limit them in number, i.e. no more than 5. Students should identify and address one or two issues about their company from those topics covered in class. This will be discussed in greater detail on the first day of class.

Team Project/Presentation:

On the first or second day of class each student will be assigned to a team and a case for presentation later in the semester. The teams will be asked to prepare a 20-minute presentation of the case. The presentation should integrate the themes addressed throughout the semester and include a discussion of the relevant legal and business issues, including market and industry context, as appropriate. The presentation should address not only the situation as it existed but an analysis of alternative approaches, if appropriate, that may have yielded a preferred result. After the presentation, the team is expected to lead the class in a 5-minute discussion. The team is required to submit a “hard copy” of the presentation to the professors at the beginning of the discussion and EACH member of the team is REQUIRED to submit a confidential team evaluation at the conclusion of the presentation. The cases for presentation are relatively well known and therefore information is readily available. Options surrounding the presentation format will be discussed in greater detail the first day of class. Your presentation may not exceed 25 slides (including title page, table of contents...).

Sessions # 1-3:

The role and purpose of the corporation; The evolution of U.S. corporate governance; on whose interest does the board of directors act? ; Fiduciary duties

Session # 1 Readings:

Foundational:

1. The American Corporation, Ralph Gomory & Richard Sylla


4. The Error at the Heart of Corporate Leadership, Joseph L. Bower and Lynn S. Paine, HBR May-June 2017

Cases:

5. Legal Parameters of Director’s Fiduciary Duties (these cases are to be presented by law school student volunteers- the presentations will address the background of the case, findings of the court and relevance to governance in no more than 5-10 minutes per case):

   o **Shlensky v. Wrigley, 237 N.E.2d 776 (Ill. App. Ct. 1968).**
   o **Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).**
   o **Unocal Corp. v. Mesa Petroleum Co, 493 A.2d 946 (Del. 1985).**
Session # 1 Questions:

1. What are we seeking to achieve in getting corporate governance “right?”

2. What are the significant findings of the cases and what are the implications for board conduct?

3. What were Douglas’ concerns regarding corporate governance and how do they compare/contrast with the governance challenges raised by Allen, Gomory & Sylla, and Bower and Paine?

Session # 2:

What are the current structure, makeup, priorities and culture of corporate boards? ; Best Practices in Constructing a Board of Directors; Independence; Committee requirements

Session # 2 Readings:

**Foundational:**


2. NYSE Listed Company Manual Section 303A

3. Commonsense Corporate Governance Principles

4. The Firing Line, Philippa Maister, Corporate Counsel, July 1, 2012


6. Valeant Has Few Options to Remove a Recalcitrant Director, Steven Davidoff Solomon, March 23, 2016, NY Times


**Cases:**

8. Tyco International: Corporate Governance, Rakesh Khurana and James Weber, [www.hbr.org](http://www.hbr.org)  
HBS 9-408-059

Session # 2 Questions:

1. How do the independence criteria, and tenure or term limits impact the functioning of the board?

2. How would you assess Breen’s decision, in Tyco, to completely replace his board of directors? What principles guided his new board creation strategy? Do you agree/disagree and why?

Session # 3 Readings:

**Foundational:**


4. Shareholders Vote With Their Dollars to Have Less of a Say, Steven Davidoff Solomon, NY Times, November 4, 2015

5. Tech Founders Want IPO Riches Without Those Pesky Shareholders, Maureen Farrell, WSJ, April 3, 2017

**Cases:**

HBS 9-406-028

7. Letter From Mark Zuckerberg, Facebook Prospectus 2012

Session # 3 Questions:

1. How do Stout’s views on the concept of the business corporation impact the board of directors’ decision making in the Veridian case?

2. How does values based management (Veridian and Facebook) relate to shareholder interest and corporate purpose? What are the implications of dual class shares on these issues?
Session #4:

Diversity; CEO Oversight

Session #4 Readings: **Note**- There are two sections in this class - Diversity and CEO Oversight

Diversity:

**Foundational:**


3. Gender Quotas For Corporate Boards: Options For Legal Design in The United States, Anne Alstott, 2014, Faculty Scholarship Series Paper 4868


5. German Law Requires More Women on Corporate Boards, New York Times, March 6, 2015, Alison Smale


**Cases:**

7. What Google Learned From It’s Quest to Build the Perfect Team, Charles Duhigg, February 25, 2016, NY Times


CEO Oversight:

**Foundational:**

1. Scoundrels in the C-Suite: How Should the Board Respond When A CEO’s Bad Behavior Makes the News, David F. Larcker and Brian Tayan, May 10, 2016, Stanford Closer Look Series (Consider questions 1-3)

2. Disclosure About Steve Jobs’s Illness: Apple Should Provide It, the SEC Should Require It, Ben W. Heineman Jr., The Atlantic, January 2011


5. A Sick CEO’s Full Disclosure, Michael V. Copeland, Fortune Magazine, October 7, 2010

**Cases:**

6. Boeing CEO Resigns Over Affair with Subordinate, Renae Merle

7. CEO Pay at Valeant: Does Extreme Compensation Create Extreme Risk, David F. Larcker and Brian Tayan, April 28, 2016, Stanford Closer Look Series (Consider questions 1-6)


Session # 4 Questions:

1. Reflecting on the readings above, in creating a board of directors how important is the issue of diversity and in what ways? Is the “business case” important to the issue? How would you advise a BOD to consider diversity?

2. Is mandating diversity on a Board of Directors desirable from a company and/or societal standpoint?

3. What principles/process should a BOD consider when dealing with a CEO whose service is impaired? Should there be a policy to inform the process?

Session # 5:

Role of Investors

Session #5 Readings:
Foundational:

1. Overcoming Short-termism: A Call for a More Responsible Approach to Investment and Business Management, The Aspen Institute, September 9, 2009

2. Focusing Capital on the Long Term, HBR, January 2014, Dominic Barton and Mark Wiseman


4. Vanguard 2017 Investment Stewardship Report


6. ETF revolution is not without cost, The Short View, Robin Wigglesworth, FT, July 6, 2017

7. Index Eligibility as Governance Battlefield: Why the System is Not Broken and We Can Live With Dual Class Issuers, Ethan A. Klingsberg, Cleary M&A and Corporate Governance Watch, June 21, 2017


Cases:

10. BlackRock letter from Laurence D. Fink, January 23, 2017

11. Vanguard An Open Letter to Directors of Public Companies Worldwide, August 31, 2017


Session # 5 Questions:

1. What are the concerns regarding short-termism? How do investors and boards best address these concerns?
2. Are there governance structures or regulatory responses that can mitigate or overcome short-termism?

3. What are the implications of the growth of passive index funds and the institutional concentration of corporate ownership?

Session #6:
Shareholder and stakeholder engagement- Shareholder Activism; Proxy Voting

Session # 6 Readings:

Foundational:


6. Some Big Public Pension Funds Are Behaving Like Activist Investors, Randall Smith, NY Times, November 28, 2013

7. Lively Debate on the Influence of Proxy Advisory Firms, David Gelles, NY Times, December 5, 2013


9. US Corporate Governance: Board of Directors Remain Under the Microscope, January 2015, Skadden’s 2015 Insights, Marc S. Gerber

10. An Activism-Shy BlackRock Throws a Surprise Punch, Steven Davidoff Solomon, April 5, 2016, NY Times
Cases:


12. Ethan Allen’s Revolutionary Defense, Corporate Board Member, Third Quarter 2016

Session # 6 Questions:

1. How should the concept of securities ownership disclosure be addressed by the corporate law system? Are reforms necessary? If so, specify.

2. How has the role of proxy advisory firms evolved? What are the most significant challenges posed by such firms today and what remedies may be appropriate?

3. What makes hedge funds more likely than other institutional investors to take on an activist role? Where/how have they been effective?

4. Based on the information provided in “Sharks in the Water” (Exhibit 4), what actions do you expect Barracuda/Tarco to take next? Explain your reasoning. Based on the information provided in Exhibits 5 and 6, what level of support does the company/ Barracuda currently have from the shareholder base? If Barracuda were to initiate a proxy fight, what level of support would it receive from other shareholders of Tarco (Exhibit 7)? What role would RiskMetrics/ISS play in the proxy process? Consider the possible actions outlined in Exhibit 8 of “Sharks in the Water.” Which of these would you recommend to the board? What other actions might Tarco take?

Session #7:

International Corporate Governance

Session #7 Readings:

Foundational:


3. UK Corporate Governance Code, April 2016 (Pages 1-6)

4. UN Global Compact/ UN Principles for Responsible Investment

5. Models of Corporate Governance: Who’s the Fairest of Them All? Rock Center For Corporate Governance, January 15, 2008, CG-11 (Consider questions in case)

7. New EU legislation to promote sustainable and transparent companies for the long-term, March 14, 2017

Cases:


Session # 7 Questions:

1. Describe/contrast the US system of governance with the UK and EU proposals. Would you recommend the US adopt any proposals and, if so, why?

2. Tata executives are to create a ten-year strategic plan. Given the evolving global environmental and social responsibilities addressed in the case, what changes would you recommend for Tata and why?

Session # 8:

Corporate Citizenship

Session #8 Readings:
Foundational:


2. Super capitalism, Robert B. Reich, Chapter 5, Politics Diverted (Pages 168-208)


Cases:


Business Speaking on Social Issues:

Foundational:


3. Legal teams rally to defend the rule of law, Special Report FT General Counsel 2017, Lindsay Fortado, June 20, 2017

Cases:


6. The Moral Voice of Corporate America, David Gelles, NY Times, August 19, 2017

Session #8 Questions:

1. Drawing from the readings, articulate your conception of the role of Corporate Citizenship. Is it about ensuring compliance with the law or is it something beyond compliance? Discuss the implications for corporate governance.

2. How is a manager who believes in embedding corporate citizenship principles into the mission of the firm to manage potentially conflicting interests of shareholders and stakeholders from a
corporate governance perspective? Integrating the Friedman's, Reich's, and Allen (from session #1) readings, is this a reliable remedy for managing social or environmental ills?

3. Do corporations have social obligations to civil society (integrate cases)? What role should corporations have in advancing social/political agendas?

Session #9:

Session #9 Reading:

Case:


Session #9 Question:

1. What recommendations should Dr. Y. Inaba make to his board regarding financial and governance policies? What are the implications of your recommendations to the firm in the short and long term? What would the implications be to civil society if other companies followed a similar path?

Sessions #10-11: Team Presentations

Session #12: Individual Company Presentations