Corporate Governance – Law and Business

New York University

Syllabus

MGMT-GB.3318.30/LAW-LW.10042.001

Term: Spring 2015

Dates: February 11 – May 6

Meeting Times: Wednesday, 6:00- 9:00 pm

Classroom: Vanderbilt Hall Room 214

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Course Objectives:

This is a special full semester section of Corporate Governance including 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; corporate citizenship; and reputational risk management.

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 15%
- Team project/presentation 30%

(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
particularly significant issues about their company from those covered in class. This will be discussed in greater detail on the first day of class.

Team Project/Presentation:

On the first 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 # 1-2

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

Session # 1 Readings:

1. The American Corporation, Ralph Gomory & Richard Sylla
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):

  - [http://scholar.google.com/scholar_case?case=2123815603526794814&hl=en&as_sdt=2&as_vis=1&oi=scholarr](http://scholar.google.com/scholar_case?case=2123815603526794814&hl=en&as_sdt=2&as_vis=1&oi=scholarr)
  - [http://scholar.google.com/scholar_case?case=15445043763196054007&hl=en&as_sdt=2&as_vis=1&oi=scholarr](http://scholar.google.com/scholar_case?case=15445043763196054007&hl=en&as_sdt=2&as_vis=1&oi=scholarr)
  - [http://scholar.google.com/scholar_case?q=506+A.2d+173&hl=en&as_sdt=2,5&case=16019965849248080126&scilh=0](http://scholar.google.com/scholar_case?q=506+A.2d+173&hl=en&as_sdt=2,5&case=16019965849248080126&scilh=0)
- **Paramount Communications, Inc. v. Time, Inc.**, 571 A.2d 1140 (Del. 1989).
  - [HTTP](http://scholar.google.com/scholar_case?q=571+A.2d+1140&hl=en&as_sdt=2,5&case=2512300501336042642&scilh=0)
  - [HTTP](http://scholar.google.com/scholar_case?q=In+re+Caremark+Int%27l,+698+A.2d+959+(Del.+Ch.+1996)&hl=en&as_sdt=2,5&case=14782220911008163269&scilh=0)

Questions Session # 1:

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 and Gomory & Sylla?

Session # 2 Readings:

5. Veridian: Putting A Value on Values, Rakesh Khurana, Joel Podolny and Jaan Elias, [HTTP](www.hbr.org)
   HBS 9-406-028

Questions Session # 2:

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 should the current composition of shareholders affect our concept of director’s obligations?
3. How does values based management (Veridian and Facebook) relate to shareholder interest and corporate purpose?

Sessions # 3-4

What is the current structure, makeup, priorities and culture of corporate boards? ; Best Practices in Constructing a Board of Directors; Definition of independence; Committee requirements
Session # 3 Readings:

5. NYSE listed Company Manual (as of September 25, 2012) Section 303 A
8. The Firing Line, Philippa Maister, Corporate Counsel, July 1, 2012
11. Boeing CEO Resigns Over Affair with Subordinate, Renae Merle

Questions Session # 3:

1. How do the independence criteria 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?
3. What is the significance of the governance indices and how would you think a board should address the role of proxy advisory firms?
4. How does the presence of a controlling shareholder impact the function and duties of the board of directors?

Session # 4 Readings:

3. Codifying the Correlation of Women Directors and Good Stock Performance, Elizabeth Dilts, August 3, 2012
4. Research Institute, Credit Suisse, Gender Diversity and Corporate Performance, August 2012
5. Homogeneous Corporate Governance Cultures, Aaron A. Dhir, SSRN 2487149
8. Disclosure About Steve Jobs’s Illness: Apple Should Provide It, the SEC Should Require It, Ben W. Heineman Jr., The Atlantic, January 2011
11. A Sick CEO’s Full Disclosure, Michael V. Copeland, Fortune Magazine, October 7, 2010
12. These cases are to be presented by student volunteers- the presentations should address the findings of the research, and relevance to policy considerations on diversity in no more than 5-10 minutes per case:
   a. Norway’s Socio-Legal Journey: A Qualitative Study of Boardroom Diversity Quotas, Aaron A. Dhir, SSRN 2488153

Questions Session # 4:

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 are the societal implications of executive compensation? Should directors consider this in setting pay?
4. 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

Shareholder and stakeholder engagement- Shareholder Activism

Session # 5 Readings:

2. Identifying the Legal Contours of the Separation of Economic Rights and Voting Rights in Publicly Held Corporations, Investor Responsibility Research Center Institute and Rock Center for Corporate Governance at Stanford University, October 2010 (Skip sections on bankruptcy and debt decoupling and focus on sections 1-9)
5. The Giant of Shareholders, Quietly Stirring, Susanne Craig, New York Times, May 18, 2013
8. Some Big Public Pension Funds Are Behaving Like Activist Investors, Randall Smith, NY Times, November 28, 2013

Questions Session # 5:

1. How should the phenomenon of empty voting 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 responsibilities do institutional investors have with respect to corporate governance and how are those responsibilities best managed? 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 # 6

International Corporate Governance

Session # 6 Readings:

3. UK Corporate Governance Code, September 2012
4. UN Global Compact/ UN Principles for Responsible Investment http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html
http://www.unpri.org/principles/
7. Board Independence & Corporate Governance in India: recent trends & challenges ahead, Jayati Sarkar, April 1, 2009, Indian Journal of Industrial Relations
http://ssrn.com/abstract=970796
10. Tata: Leadership with Trust, Oana Branzei, Richard Ivey School of Business, The University of Western Ontario, 910M25

Questions Session #6:

1. Describe/contrast the US system of governance with the Chinese and Indian systems. What are the implications for governance failures? What solutions would you recommend?
2. Should the US vary its independence requirements for non-US companies trading on US capital markets?
3. Do you favor a rule or principles based governance system? Explain how your choice prevents governance failures?
4. 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?

Sessions # 7-8

Corporate Citizenship

Session #7 Readings:

3. Super capitalism, Robert B. Reich, Chapter 5, Politics Diverted, Pages 168-208
5. When the jobs Inspector Calls Do campaigns for “ethical supply chains” help workers?, The Economist, March 31, 2012

Questions Session #7:

1. Drawing from the readings, articulate your conception of the role of CSR. Is it about ensuring compliance with the law or is it something beyond compliance? Discuss the implications for corporate governance.
2. Is investing corporate dollars in CSR initiatives in furtherance of or in violation of managers’ fiduciary duties? Explain incorporating Friedman’s, Karnani’s, Reich’s, and Allen’s papers. How is a manager who believes in embedding CSR principles into the mission of the firm to manage potentially conflicting interests of shareholders and stakeholders from a corporate governance perspective?
3. Are corporations moral beings with social obligations to civil society (integrate supply chain management)?

Session # 8 Readings:

1. Overcoming Short-termism: A Call for a More Responsible Approach to Investment and Business Management, The Aspen Institute, September 9, 2009
2. Capitalism for the Long Term, Dominic Barton, March 2011, HBR R1103F
3. UK Stewardship Code, September 2012
7. BlackRock letter from Laurence D. Fink, March 21, 2014
11. In a Lemonade Stand, a Transformation of the Corporation, Steven Davidoff Solomon, NY Times, November 12, 2013

Questions Session # 8:
1. What are the concerns regarding short-termism? How are these concerns best addressed by investors and boards?
2. Are there governance structures or regulatory responses that can mitigate or overcome short-termism? Are new business forms necessary/desirable to achieve societal objectives?
3. Does Chevron’s strategy in the Niger Delta adequately address shared value? Are there elements missing?

Session # 9

Reputational Risk Management

Session # 9 Readings:

3. Caught in the Middle, Ben W. Heineman, Jr. Corporate Counsel, April 2007
5. Blindspots, Why We Fail to Do what’s Right and What to Do about It, Max H. Bazerman and Ann E. Tenbrunsel, Chapter 6

Questions Session # 9:

1. What conditions create opportunities for fraud? What groups are in the best position to discover, prevent, or mitigate fraud? What would the elements include of such a program?
2. Should a Board of Directors monitor reputational risk as part of its risk management function? If so, how, and by what measures?

Sessions # 10-11: Team Presentations

Session #12: Course Recap

Additional Readings (Not Required):

The Shareholder Value Myth, Lynn Stout