An Introduction to Corporate Governance[1]

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This teaching note is a detailed introduction to the key concepts of corporate governance. If you want to know what corporate governance is, why it matters, who does what, who is impacted, and so on, this note is for you.

There is much more to the field of corporate governance than what we discuss in this note, but this will provide you with an understanding of its core concepts and terminology, its relevance, some of the debates in the field and the differences in how governance is practiced.

The discussion below is in six sections:

1) ***The Players***: Stakeholders, shareholders, principals, agents
2) ***Corporate Governance***: What it is, why it matters
3) ***The Board of Directors***: Directors, independence, employee representation
4) ***The Shareholder's Voice***: Proxy voting, activist investors, Say on Pay
5) ***Principles, Codes and Legislation***: The SEC, Cadbury Report, SOX, Dodd-Frank Act
6) ***Debates***: Types of governance, leadership, diversity, independence, activist investors

1) THE PLAYERS

It is difficult to discuss corporate governance without first describing the primary players. We begin with an overview of the parties and the two main corporate governance paradigms.

Figure 1-A: Shareholder view of the firm

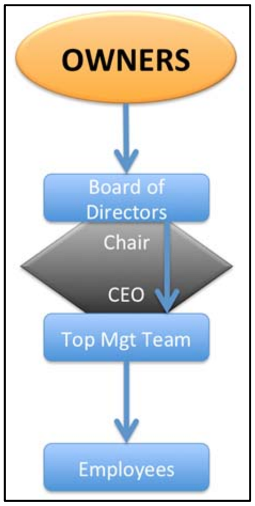
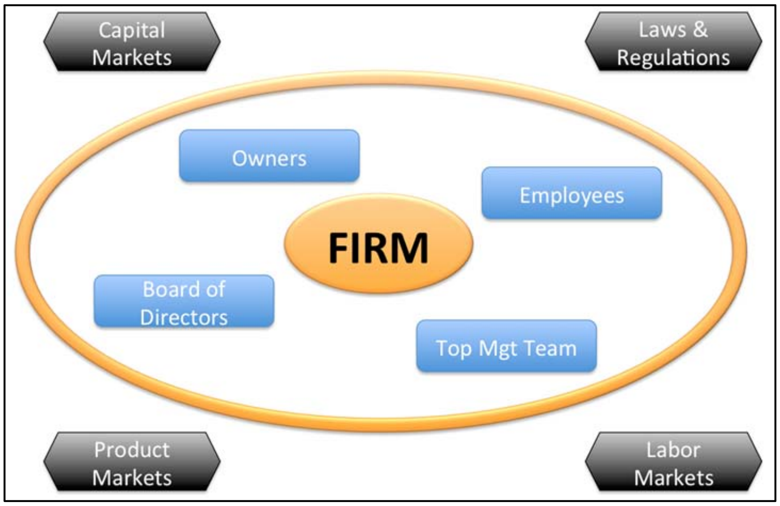


Figure 1-B: Stakeholder view of the firm



[1] This note is prepared for teaching purposes.

Figure 1-A represents the more narrowly defined *shareholder view* of the firm, which is the predominant form of governance in the U.S. and the U.K. It includes the owners, the Board of Directors, the Top Management Team and the employees who, for the most part, are related hierarchically. In this paradigm the firm's sole objective is to maximize shareholder value. The more broadly defined *stakeholder view* of the firm predominates in most countries. It includes a collection of stakeholders (e.g., owners, employees, directors, customers and suppliers) who compete for the firm's resources, do not always have aligned interests, and are constrained by the external context in which the firm operates (e.g., capital markets and legal systems).

Some critical definitions:

Firm: Different countries apply the word *company* to different types of legal entities. In this note, we use *firm*, a term from economics that describes a collection of entities that come together in a legal structure to do business. *Firm* can be applied to any business that has at least one physical establishment and provides goods or services. Firms include corporations, partnerships, cooperatives, and so on. In most countries, a firm is treated as a legal person or entity that has rights and responsibilities.

Stakeholder: A person or entity that can influence, benefit from or be adversely affected by the actions, successes or failures of a firm. Stakeholders include but are not limited to a firm's owners, employees, directors, suppliers, consumers, business partners, relevant government bodies and, in some cases, the news media and labor unions. It is important to know who a firm's stakeholders are, how corporate decisions affect them, and how they influence the firm. Without stakeholders, there is no firm.

Owner: A person or entity that owns all or part of a firm. An owner may be the man who owns the gas station on the corner, the woman who owns the local nonprofit that does consulting for small businesses, a group of MBA students launching an entrepreneurial venture, a grandmother who invested in Ford in order to fund her retirement, the California state pension system (CalPERS), the government of Kuwait through a sovereign wealth fund, or a Korean business group such as LG. Thus, owners may be individuals, partners, families, or individual investors. They may also be institutional investors, such as pensions or mutual funds, governments, or corporations. ***Dispersed ownership*** occurs when a firm has many owners and no single owner has more than 50% of the firm. In the U.S., the majority owner commonly owns less than 10% of a firm. For example, 10% of the ownership of the Ford Corporation is in the hands of different members of the Ford family; the rest is held by hundreds of institutional investors. On average, in 2012, the majority owner in the U.S. owned 43.5% of the firm.[2] ***Concentrated ownership*** occurs when a person or family owns 51% or more of a firm. For example, in 2013 Dell went from being a publicly held firm with dispersed ownership to a privately held firm with 75% of the ownership concentrated under Michael Dell.

Shareholder: In some privately held firms and in all publically held[3] firms, ownership is defined by who owns or purchases shares of the firm. Owners are also referred to as equity

[2] Thomson Reuters, Ownership Summary
[3] A publicly held firm is a company traded in a stock exchange.

holders. When a venture capitalist invests in a startup company that makes low-cost accessories for mobile devices, the company increases its cash on hand and the venture capitalist becomes a shareholder, or part-owner, of the firm. In the U.S., most shareholders are institutional investors, such as Blackrock, Vanguard and JP Morgan Chase. Some privately held companies do not issue shares. In this note, these owners are treated as the majority owners of their firms.

Investor: All shareholders are investors in a firm, but not all investors own shares. When a bank loans money to a firm, no part of the firm's ownership is transferred to the bank (in the U.S.). However, since most equity investments result in at least partial ownership of a firm, the terms *investors* and *shareholders* are often used interchangeably. Individual and institutional investors may be foreign or domestic.

Principal: The principal of a firm is its owner. The woman who wholly owns the local butcher shop, the venture capitalist who owns 10% of a startup's shares, and the shareholder who owns .0001% of a Fortune 500 company are all principals of their respective firms.

Agent: A person or entity having the legal right to act on behalf of the principal. In a firm, the ***Board of Directors*** and the ***Top Management Team*** are the agents who act on behalf of the owners.

Board of Directors (Board, or BoD): A team of individuals — usually seven to twelve executives and nonexecutives — that meets several times a year in order to advise and monitor the Top Management Team and, in particular, the CEO. It hires and fires the CEO. It typically makes annual voting recommendations to shareholders on executive compensation and Board seat nominations.

Executives: The Top Management Team (TMT) that has been put in place by the owners to run the firm. An executive is an employee of the firm and is usually paid a salary; he or she may also be paid with shares, stock options, bonuses and perks as performance incentives. Firms typically have executives in the following C-level roles: Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operations Officer (COO) and Chief Compliance Officer (CCO). In some industries, there may be other executives, such as the Chief Risk Officer, Chief Technology Officer, and Chief Legal Officer.

Employees: In many firms, the owners manage day-to-day operations. But as a firm grows, owners must hire managers to help run it. As a firm continues to grow, managers hire other employees, who are paid a salary or a wage. In most cases they are not shareholders.

Managers: When a firm's "managers" are being discussed, seek clarification on whether these are the managers of employees or the firm's executive-level managers. This note refers to managers exclusively as C-level executives who comprise the Top Management Team.

Markets: The systems, procedures and infrastructures that enable parties to engage in forms of exchange. Common markets include:

Capital Market: Exchange of equity or debt
Supply Market: Exchange of goods and services needed to create a final product
Product Market: Exchange of final goods and services
Labor Market: Exchange of jobs and employees

2) CORPORATE GOVERNANCE

Should an elementary school hire many teachers to teach small classes and pay them low salaries, or hire fewer teachers who have large classes but are paid much higher salaries? Should a manufacturing firm lay off a certain percentage of its employees at all of its facilities or permanently close one facility? Should a technology firm acquire a rising competitor or compete by developing a comparable product?

How different stakeholders would answer these questions would depend on interests and their relationships to the firm. Corporate governance is about aligning the interests of stakeholders and ensuring that everyone works toward a common goal that is in the firm's best interests. Corporate governance is a set of practices that helps stakeholders negotiate support for their conflicting interests and enables principals to hold agents accountable for their decisions and actions.

1) The common goal.

For a firm to spend more time producing than engaging in infighting among its stakeholders, the stakeholders need to be aligned toward a **common goal for the firm**. In some countries, such as the U.S. and the U.K., the firm's common goal is to generate profits for the owners. In accordance with the shareholder view of governance, the driving corporate principle in these countries is ***maximizing shareholder value***. It does not matter whether ownership is dispersed or concentrated — the goal is to maximize the value of the firm for the shareholders, not just the majority owners. Therefore, a key responsibility of corporate governance in the U.S. and the U.K. is ***protecting minority shareholder*** rights. This system of placing the interests of the owners above the interests of other stakeholders is known as ***shareholder-based governance***.

In some countries — for example, Germany and Japan — social responsibility is a firm's primary concern, and this calls for simultaneously serving the interests of multiple stakeholders (e.g., employees and suppliers) rather than the shareholders alone. This system is known as ***stakeholder-based governance***. In other countries, such as China, a key focus is pursuing the government's interests.

Corporate governance serves to find the balance between incentivizing executives and directors to pursue the common goal and ensuring that those incentives benefit the shareholders (or in stakeholder-based governance, benefiting the government, employees, society, etc.). Corporate governance also ensures that executive incentives do not come at the expense of the shareholders (or, of the stakeholders).

2) The Principal-Agent Problem

A firm's principals and their agents may have different opinions about how to run the firm. When this is the case, the resulting conflict is known as the Principal-Agent Problem, which Jensen and Fama first identified in 1978.

In addition to the conflicting interests of principals and agents, other stakeholders in the firm have their own agendas and attempt to influence the decisions and actions of the principals and agents.

Corporate governance is about aligning the interests of different parties, and ensuring that everyone works toward the firm's common goal. The Board, as the body governing strategy development and guaranteeing performance, is responsible for ensuring that principal-agent problems are resolved in ways that serve the interests of the shareholders or, in stakeholder-based governance, in ways that serve the interests of the appropriate stakeholders.

3) Maximizing performance, and doing it ethically

Businesses constantly strive to do more in less time with fewer resources. Many scholars and practitioners, such as Anne Simpson at CalPERS, argue that good corporate governance — which includes good values — leads to **higher firm profitability** and **more efficient use of firm resources**. Corporate governance is not just about having bylaws, conducting annual ethics training, and conforming to industry rules of conduct. It also involves creating standards, holding firms accountable for meeting those standards, instilling values that generate greater shareholder profits, and being good corporate citizens.

3) THE BOARD OF DIRECTORS

At this point we have a firm, a common goal, and the commitment to be profitable and professionally responsible. How do we enforce good corporate citizenship? And who is ultimately responsible for the performance of the firm? In all publically traded firms — and in many privately held firms — this is the domain of the Board of Directors.

Board of Directors: The group of directors whose purpose is to ***advise*** and ***monitor*** the firm's Top Management Team, including the CEO. Members of the Board represent the interests of shareholders, and the Board's main purpose is to increase the firm's value as defined by its common goal (i.e., owner profit, social responsibility, and/or government interests, etc.). The Board does this by making sound strategic decisions and ensuring that the TMT is executing these decisions efficiently and effectively.

Director: A person elected to advise and monitor the firm's TMT. Ideally, a director defends the interests of the owners and other stakeholders and has an area of expertise (e.g., industry, accounting, technology, or marketing) that is relevant to the firm's operations. An ***insider director*** is an executive who works on the day-to-day operations of the firm and has a vested interest in firm profitability. The insider director's connection to the firm is usually in the form of employment, investment, ownership or professional partnership. An ***independent director*** is an individual who does not work on the day-to-day operations of the firm. An independent director often has a separate day job, such as being the CEO of another firm or a corporate governance professor. Independent status is granted when for several years a director has had no commercial or personal ties with another firm that impacts corporate profitability.

The work of advising and monitoring consists of four key tasks (Larker, Ch. 6):

1. Defining the corporate strategy
2. Developing and testing the value-generating business model
3. Identifying key indicators of corporate performance
4. Identifying and developing processes that mitigate risk

The Board also has a legal obligation to act in the best interests of the owners — i.e., the principals — of the firm. This legal obligation is known as ***fiduciary duty*** and includes:

1. ***Duty of care***
   Decisions must be made with due diligence and deliberation.
2. ***Duty of loyalty***
   Decisions must place the interests of principals over the interests of directors.
3. ***Duty of candor***
   Decisions must be made in the spirit of disclosure and transparency.

Chairperson: This individual leads the Board, manages relationships with outside investors, and sets the Board's agenda.

CEO: He or she manages the TMT, the implementation of corporate strategy, and the day-to-day operations of the firm.[4]

[4] http://www.forbes.com/sites/georgebradt/2013/08/28/the-right-way-to-divide-responsibilities-between-chairman-and-ceo

Dual Leadership occurs when one person serves as both CEO and Chairperson of a firm. This is more common in the U.S. than in other countries. CEO-Chair separation occurs when the two positions are occupied by different people.

Two-Tier Boards: Some countries have tiered board structures. For example, German firms commonly have an executive board that manages operations and a supervisory board that monitors and advises the executive board.[5] In China, it is common to have a board of directors that is similar to a BoD in the U.S. and a supervisory committee that is responsible for the firm's financial decisions and the compliance and behavior of its board.

Board Committee: A subset of the directors with a specific focus or specific deliverables. Most Boards have at least three committees that, in the U.S., tend to be populated by independent directors:

The ***Nominating Committee*** nominates individuals to fill vacant (or soon to be vacant) seats on the Board, including that of the Chair. In some cases, this committee may also nominate persons for the position of CEO. Shareholders have a nonbinding vote to accept or reject these nominations each year.

The ***Compensation Committee*** determines the TMT's and directors' compensation packages, often with the aid of a compensation consulting firm. Shareholders have an annual, nonbinding vote on the proposed compensation packages (see Say on Pay).

The ***Audit Committee*** is responsible for adherence to the firm's internal controls. It engages with the external auditors, who testify as to whether the firm's reporting is accurate. The CEO and CFO must personally review all financial reports and attest to their completeness and validity. Other common committees include the Ethics and Compliance committees, the Technology Committee, and the Executive Committee. At least one member of the Audit Committee must be a financial expert.

Codetermination: A law that gives employees the right to have half of a Board's representatives. This is practiced in German firms having more than 500 employees and in several other European countries. Codetermination allows employees to have a strong voice in determining the firm's corporate strategy.

In the past, Boards played a less active role in monitoring and advising firms. They developed a reputation for being "male, pale and stale," "sleeping at the wheel," and showing more interest in personal perks than in fulfilling their fiduciary and corporate accountability duties. But because of the financial crisis of 2008 in the U.S., the Asian financial crisis of 1997, the Eurozone crisis of 2010, and the large-scale mismanagement of corporate funds worldwide, Boards are waking up and being held accountable. They are also becoming more diverse and independent.

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[5] http://investor-relations.lufthansagroup.com/en/corporate-governance/corporate-governance-declaration-section-289a-hgb/board-of-management-and-supervisory-board-procedures.html

Boards typically convene in person several times a year, and they may have additional meetings by phone. The in-person meetings consist mainly of briefings, discussions, and making final decisions. Most of the work accomplished by Boards is done by board committees.

Note: There are many kinds of Boards, such as Boards of Trustees, Regents, Managers, Executives, and Governors. Each of these structures has its own rules and guidelines.

4) THE SHAREHOLDER'S VOICE (IN THE U.S.)

In shareholder-based governance, the owners' interests, the Board's decisions and the TMT's actions all focus on maximizing shareholder value and protecting minority shareholder rights. The Board is responsible for making sound strategic decisions that are consistent with the firm's common goal, and for ensuring that the TMT is executing those decisions efficiently and effectively. Most firms hold an ***annual general meeting*** (AGM) where shareholders may pose questions to the Board and the TMT. However, not all shareholders are allowed to attend, and the AGM is quite scripted by the BoD and TMT. Therefore, a meeting of all of a firm's shareholders is a rarity.

Thus, the day-to-day management of a firm is performed by its TMT, which is monitored and advised by directors who meet four to six times a year, who are elected annually by dispersed and disparate shareholders.

This raises two questions: What can dissatisfied shareholders do, and how can they make their voices heard?

The answer is ***shareholder activism***. In the past, shareholders had very few opportunities to share their visions for a firm or to express their anger with or disapproval of the actions of a Board or TMT. There are now several mechanisms shareholders may use to effect change in U.S.-based firms; the primary ones are ***activist investors*** and ***Say on Pay***.

Shareholder activism: Shareholders raising their voices. The means of expressing shareholders' views include letters to the Board, open letters published in the press, boycotts, hostile takeovers, voting down Board proposals and packages, and taking votes of no confidence.

Shareholder democracy: The protection of minority shareholder rights by allocating one voting right per share of stock. A firm that uses ***dual class shares*** awards a different number of votes to different classes of shares. For example, the owner of a "preferred" share may be able to cast one hundred votes for every share owned. This practice can be used to allow a subset of owners to control the company without being majority shareholders. Shareholder activism prevents a firm with dispersed ownership from being controlled as if its ownership were concentrated.

Activist Investor: An individual or entity that purchases a significant percentage of shares in order to effect a change in the firm, such as gaining a seat on the Board, replacing the firm's leadership, or advocating or rejecting a merger or acquisition. An activist investor often influences the Board by gaining the support of a large block of shareholders. Formerly called "corporate raiders," activist investors such as Carl Icahn have a reputation for seeking short-term profits through their involvement with a firm.

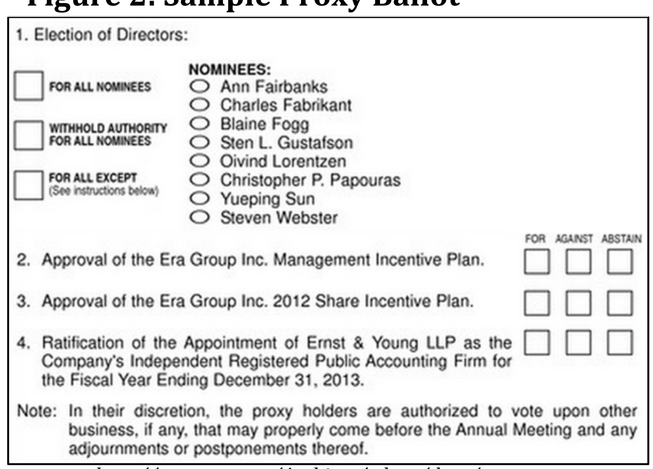
Say on Pay: One result of the financial crisis of 2008 was the perception that executives were receiving compensation that set the wrong incentives, especially when the firm was underperforming. In response, the U.S. Congress passed the Dodd-Frank Act and its nonbinding Say on Pay provision, which came into effect in 2011. The Act requires companies to solicit an advisory vote from the owners on executive compensation.

Proxy: A proxy is a person or entity that has the authority to act for another person or entity. For example, agents are proxies for principals. However, in the context of shareholder activism, the term *proxy* has a more specific definition. A proxy is the means by which shareholders tell the BoD what it should do.

Proxy Season: In March and April of each year, the Board of each publically owned company in the U.S. prepares a statement of the past year's performance and of the Board's short-term and long-term strategies. The Board also prepares and distributes a ballot asking owners to vote on potential strategy-related decisions proposed by other owners and the Board. Votes are commonly solicited for the election of directors, making political contributions, approving the external auditor, and adopting sustainability strategies. This period of proxy preparation and voting is called the proxy season. The statement summarizing strategies and performance is called the proxy statement. The ballot is called the proxy ballot. Proxy statements and ballots are often prepared by proxy advisory firms.

Proxy Ballot:
Sometimes shareholders cast their votes in a town hall setting. But in most cases, votes are cast by proxy. Each firm prepares a *proxy ballot* and sends it to all of its shareholders. When a shareholder completes and mails the ballot, this is called *voting by proxy*. Institutional investors typically hire *proxy firms* to make recommendations or to cast their votes. When a proxy firm casts a vote on an investor's behalf, this is also called *voting by proxy*.

Figure 2: Sample Proxy Ballot


1. Election of Directors:

FOR ALL NOMINEES

WITHHOLD AUTHORITY FOR ALL NOMINEES

FOR ALL EXCEPT (See instructions below)

NOMINEES:
Ann Fairbanks
Charles Fabrikant
Blaine Fogg
Sten L. Gustafson
Oivind Lorentzen
Christopher P. Papouras
Yueping Sun
Steven Webster

	FOR	AGAINST	ABSTAIN
2. Approval of the Era Group Inc. Management Incentive Plan.			
3. Approval of the Era Group Inc. 2012 Share Incentive Plan.			
4. Ratification of the Appointment of Ernst & Young LLP as the Company's Independent Registered Public Accounting Firm for the Fiscal Year Ending December 31, 2013.			

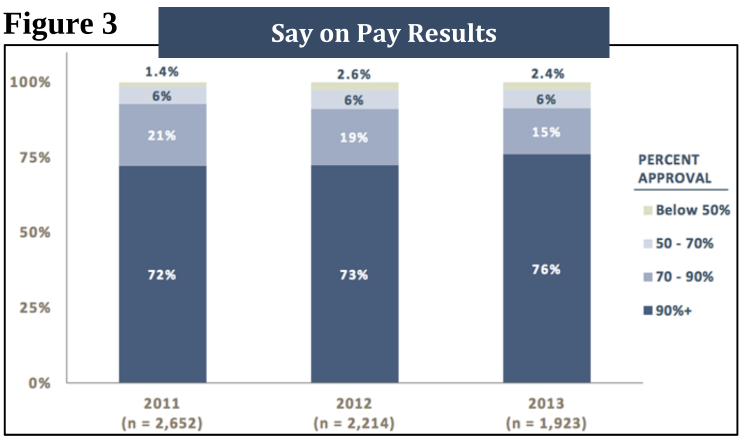
Note: In their discretion, the proxy holders are authorized to vote upon other business, if any, that may properly come before the Annual Meeting and any adjournments or postponements thereof.

http://www.sec.gov/Archives/edgar/data/1525221/000152522113000073/proxycard002.jpg

Ideally, a proxy ballot allows shareholders to vote on the following each year: (1) election of each member of the entire Board, (2) ratification of the external auditor, and (3) executive compensation. Additional topics may include changes to the bylaws, the frequency of shareholder votes on executive compensation, and whether the firm will pay the CEO a large sum to walk away in the event of a merger (a.k.a. a *golden parachute*). Unless a firm's bylaws specify that shareholders' votes are binding, proxy votes serve only as recommendations to the Board. However, it can be a significant public embarrassment to a firm if shareholders fail to endorse Board members or an executive compensation package.

While voting by proxy in the U.S. began in 1934, Say on Pay did not come into effect until the 2011 proxy season. In 2012, only 55 publically traded U.S. firms failed to pass the vote. In other words, the shareholders of these 55 firms recommended that their Compensation Committees propose reduced packages or hire new CEOs.

Figure 3



http://www.semlerbrossy.com/wp-content/uploads/2013/07/SBCG-2013-Say-on-Pay-Report-2013-07-171.pdf

Proxy Contest/Fight: This occurs when an activist investor seeks to either remove current Board members in order to sit on the Board or to nominate Board members to be voted on via a proxy ballot. If a Board has a ***staggered vote***, members are elected for terms of multiple years. For example, if Board members are elected for three years, then one-third of the Board is elected annually. This offers continuity and helps to prevent hostile takeovers. But it also makes it harder to replace a Board that is mismanaging the firm and reduces the potential impact of a proxy contest.

5) PRINCIPLES, CODES AND LEGISLATION

Below are some of the principles, codes, and acts related to corporate governance along with some of their specific reforms. It is not an exhaustive list, nor are any of the summaries complete. However, here are some of the guidelines that aim to encourage better corporate governance through better advising, monitoring, reporting and accountability.

1933 & 1934: Security Exchange Acts (U.S.) — ***Law***

http://www.sec.gov/about/laws/sea34.pdf
- Regulated voting by proxy
- Prohibited insider trading
- Required financial disclosure by public companies

1992: Cadbury Report (U.K.) — ***Regulation (Comply or Explain)***[6]

http://www.commerce.usask.ca/faculty/colin boyd/personal/cadbury.pdf
http://www.ecgi.org/codes/documents/cadbury.pdf
- Emphasized that Boards must meet regularly to monitor and advise the TMT
- Recommended that the CEO and Chair positions be filled by different people
- Advocated filling most of the seats on Boards with independent directors
- Recommended the use of independent auditors
- Called for the nomination of directors by independent directors

1999/2004: OECD Principles — ***Regulation (Comply or Explain)***

http://www.oecd.org/daf/ca/corporategovernanceprinciples/40823806.pdf
- Outlined shareholders' rights, including electing or removing Board members
- Called for an insider CEO and an independent Chair
- Advocated filling most of the seats on Boards with independent directors
- Advocated minority shareholder protection
- Highlighted the need for hostile takeover protection
- Counseled the equitable treatment of stakeholders

2002: Sarbanes-Oxley Act (SOX) (U.S.) — ***Law***

http://www.soxlaw.com
http://en.wikipedia.org/wiki/Sarbanes–Oxley_Act
http://www.sec.gov/about/laws/sa33.pdf
- The CEO & CFO must sign financial reports, accepting responsibility
- Reports must be accurate and contain all material information
- Firms must adhere to accounting standards
- Auditors must be independent and periodically rotated
- It created the U.S. Public Company Accounting Oversight Board (PCAOB)
- Allowed for prosecution for accounting noncompliance
- Protected whistleblowers

2010: Dodd-Frank Wall Street Reform (U.S.) — ***Law***

http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf
http://www.mofo.com/files/uploads/images/summarydoddfrankact.pdf
- Prohibited "too big to fail" bailouts
- Introduced nonbinding Say on Pay
- Established government council to advise and monitor finance firms
- Prohibited banks from using hedge funds for profit

[6] First practiced with the *Cadbury Report*, "comply or explain" means that to avoid disciplinary action for governance noncompliance, a firm must either comply with a policy or fully explain the choice to not comply

6) DEBATES AND SUGGESTIONS FOR ADDITIONAL READING

Corporate governance is a hot topic today, in part because of corporate scandals, but also because shareholders are becoming more vocal and vigilant. As a result, there are several ongoing debates as to what constitutes good corporate governance. Some of the most salient topics concern:

Types of Governance. Which is better: shareholder-based or stakeholder-based governance? Shareholder-based governance predominates in the United States because the U.S. has a market-based economy with primarily dispersed ownership. But this is not the global norm. Globally, the vast majority of firms are family-owned with concentrated ownership. Socioeconomic factors such as strong labor unions, business groups, government-owned banks, and institutionalized corruption significantly impact business strategies and decisions. However, since the United States is a leader in the corporate governance conversation, much of the existing research focuses on business operations and governance practices in the U.S. and does not reflect or fully address the needs and realities of firms in other markets.

Dore, R. (2005). 'Deviant or different? Corporate governance in Japan and Germany.' *Corporate Governance: An International Review*, Vol. 13, No. 3, May, p. 437-446.

Enriques, L. and Volpin, P. (2007). 'Corporate governance reforms in continental Europe.' *Journal of Economic Perspectives*, Vol. 21, No. 1, Winter, p. 117-140.

Höpner, M. and Jackson, G. (2006). 'Revisiting the Mannesmann takeover: How markets for corporate control emerge.' *European Management Review*, Vol. 3, No. 3, Winter, p. 142-155.

Jackson, G. (2005). 'Stakeholders under pressure: Corporate governance reform and labour management in Germany and Japan.' *Corporate Governance: An International Review*, Vol. 13, No. 3, May, p. 419-428.

Dual Leadership and other leadership issues. Which leadership structure results in better value creation for the firm: one person performing both roles or dual leadership? What are other key issues regarding the senior leadership on the Board?

George, W. (2013). 'Board governance depends on where you sit.' *McKinsey Quarterly*, February, p. 1-11.

Morck, R. and Steier, L. (2005). 'The global history of corporate governance: An introduction.' *A History of Corporate Governance around the World: Family Business Groups to Professional Managers.* National Bureau of Economic Research, Working Paper No. 11062, p. 1-64.

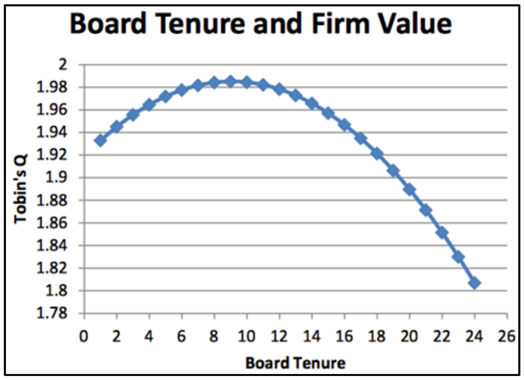
Director Independence. The 1992 Cadbury Report advocated having a majority of independent directors. But whether this is in the best interests of shareholders and stakeholders is still debated. Increased Board independence entails taking on the risk of having fewer directors involved in the firm's strategic planning and mission-critical decisions who possess tacit knowledge about the firm or expertise within the industry. So the question remains: How independent should a Board be?

Brundage, M. and Brahmst, O. (2004). 'Director independence: alive and well under Delaware law.' *Global corporate governance guide 2004: Best practice in the boardroom.* Ed. Nigel Page. London: Globe White Page.

Carter, C. and Lorsch, J. (2003). *Back to the drawing board.* Watertown: Harvard Business Review Press, Ch. 8-9.

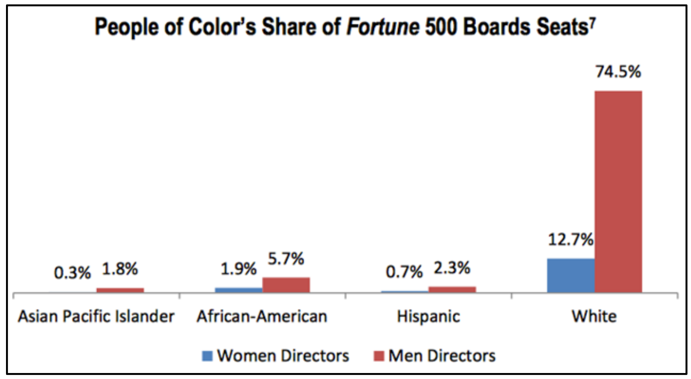
Board Diversity. What constitutes diversity and how does it impact profitability? One factor that is being researched and debated is the role of women on Boards. Globally, a rising number of countries require having women on Boards, but there has been little increase in the number of women in Board leadership positions. People are asking questions such as: what are the barriers to increasing and sustaining diversity on Boards, and does it really matter?

Figure 4-A



http://www.fma.org/Chicago/Papers/Doesboardtenurematter.pdf

Figure 4-B



http://www.calpers-governance.org/docs-sof/marketinitiatives /resources/qt-women-on-boards.pdf

ABD. (2012). 'Missing pieces: Women and minorities on Fortune 500 boards.' *Alliance for Board Diversity*, 2012 Census, p. 1-20.

Chanavat, A. and Ramsden, K. (2012). 'Mining the metrics of board diversity.' *Thomson Reuters Financial and Risk*, June 2013.

Terjesen, S., Aguilera, R. and Lorenz, R. (2013). 'Legislating a woman's seat on the board: Institutional factors driving gender quotas for boards of directors.' *Journal of Business Ethics*, Forthcoming, p. 1-45.

Value of Activist Investors and Shareholder Activism. Historically, activist investors were viewed as enemies of the Board, but that paradigm is shifting:

> *Until recently, many companies responded to activists by simply refusing to meet with them and hoping they would go away . . . After a string of such debacles, and with activism today more established and prolific than ever before, that approach has fallen out of favor . . . Many companies are preparing for activists before they even show up . . .*[7]

One aspect of the debate regarding shareholder activism through activist investors is the long-term impact of their actions. There is little doubt that the primary focus of activist investment is personal, short-term financial gain. However, past tactics to prevent it do not consistently work, and their involvement appears to generate long-term value for shareholders at least part of the time. Therefore, firms are trying to find new ways to work with activist investors, and attempting to actively meet short-term growth goals while maximizing long-term sustainability and profitability.

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[7] http://dealbook.nytimes.com/2013/11/11/boardrooms-rethink-tactics-to-defang-activist-investors/?_r=0

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CONCLUSION

Corporate governance is the system and the art of aligning the conflicting interests of different parties within the firm and ensuring that everyone works toward the firm's common goal. In shareholder-based governance, the common goal is maximizing value for the firm's owners; this ordinarily means making money for the owners. In stakeholder-based governance, the common goal is maximizing value for various stakeholders while recognizing that different stakeholders define value in different ways.

How management responsibilities are divided may vary from firm to firm. But in general, the Board sets the firm's vision and strategy and is responsible for driving shareholder value, the budget, compliance, and TMT hiring and compensation. The Board of Directors is comprised of insider and independent agents who work in committees to advise and monitor the firm and its executives, negotiate the conflicting interests of the stakeholders, and respond to the needs and demands that principals express through shareholder activism. The Chairman or Chairwoman leads and manages the Board.

The TMT implements the strategy in alignment with the vision and is responsible for running the firm's day-to-day operations, managing all of the firm's operational divisions, and for driving efficient and effective operations (i.e., productivity). The CEO leads and manages the TMT.

In many ways, the Chair and CEO are peers because they have separate domains, but the CEO is accountable to — and hired/fired by — the Board

Shareholders provide nonbinding recommendations through proxy voting, including Say on Pay. Activist investors may become more directly involved through creative marketing, building coalitions of shareholders, and gaining seats on the Board. Minority shareholder rights are protected by *one vote / one share* shareholder democracy.

Many legislators and regulators have tried to characterize and mandate "good governance," including reliable and transparent reporting, having a majority of independent directors, splitting the CEO and the Chair roles, diversifying Board memberships, having nine to twelve directors, having Audit and Nominating committees comprised of independent directors, and shareholders voting on retaining or releasing each Board member each year.