Corporate governance experts participate in Proxy Access Roundtable at HLS

“Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.”

Demonstrating the truth behind Margaret Mead’s words, a group of about 40 thoughtful and committed individuals, all prominent members of the nation’s legal, financial, regulatory and academic communities, gathered on Oct. 9 at Harvard Law School’s Langdell Library. They had been invited by the HLS Program on Corporate Governance to participate in the program’s Proxy Access Roundtable.

The purpose of the roundtable was to discuss whether shareholders of public companies should have the right to nominate director candidates on the company’s ballot, which is distributed to shareholders with the company’s annual report—what corporate governance professionals refer to as “proxy access.”

The Proxy Access Roundtable was organized by the Program on Corporate Governance as part of its goal to encourage discussion and debate on important corporate governance issues, including the Securities and Exchange Commission’s recent proposal to allow proxy access. A main aim of the Program on Corporate Governance, as Dean Martha Minow noted in her introductory remarks to the roundtable, is to “bring together people who are at the cutting edge of practice, the cutting edge of academia and the cutting edge of policymaking.”
The proposed proxy access reforms have proved controversial, and all sides of the debate were represented at the roundtable. Those present included people representing investors, such as Rich Ferlauto of AFSCME’s Public Pension Programs, Abe Friedman from Barclays Global Investors, Isaac Corré ’89 of Eton Park Capital Management and Roy Katzovicz [photo above, left] of Pershing Square Capital Management, who were generally in favor of allowing shareholder access to the proxy ballot. Also participating were many with a corporate perspective, such as Bob Mendelsohn ’71, former CEO at Royal and Sun Alliance Insurance Group, Ted Mirvis ’76 of Wachtell Lipton and Toby Myerson ’75 of Paul, Weiss, who stressed the potential costs of proxy access reform. The roundtable also included two former commissioners of the Securities and Exchange Commission and a former head of the SEC’s Division of Corporation Finance, as well as prominent academics from law schools around the country.

Chairing sessions during the debate were Professor Lucian Bebchuk L.L.M. ’80 S.J.D. ’84, Professor Robert Clark ’72 and Professor Howell Jackson ’82 [photo above, right]. Listening in on the debate were senior staff members from the SEC and Congress.

From the first session, battle lines were drawn. Jay Eisenhofer, co-founder and managing director of Grant & Eisenhofer, explained that “the fundamental premise behind proxy access is that shareholders do not have sufficient influence over composition of boards of directors. … Proxy access is the mechanism that will help provide that influence, and it will be a good thing for corporate governance and management of these corporations.” Byron Georgiou ’74, who has recently been appointed as a member of the Financial Crisis Inquiry Commission (which, he explained, gave him a "particular interest in the area"), expressed the view that “moving in the direction of giving shareowners a larger voice in the governance of corporations … is an experiment well worth trying. There’s really very little risk.”

On the other hand, Joseph E. Bachelder III ’58, founder of the Bachelder Law Firm, suggested that “the object of good corporate governance is the profitable operation, short term and long term, of a business enterprise; … the object of corporate governance is not to create a paradigm for democracy.” And
James Morphy ’79, a partner at Sullivan & Cromwell, questioned arguments that reform is called for by the financial crisis: “I would love to have a vote by hands at some point of the people in this room that believe that if proxy access in whatever form you want to imagine, was passed in 2003, that the financial crisis would have been averted.”

No matter what action the SEC takes on proxy access, the organizers of the Proxy Access Roundtable considered the roundtable a resounding success. As Dean Minow concluded, “Proxy access reform is absolutely going to happen in one way or another, and [the Proxy Access Roundtable has] the opportunity to help shape the discourse.”

In addition to Professors Bebchuk, Clark and Jackson, Harvard Law School faculty and affiliates participating in the Proxy Access roundtable were Professors John Coates, Allen Ferrell ’95, Jesse Fried ’92, Mark Roe ’75 and Guhan Subramanian ’98, as well as Visiting Professors Alma Cohen and Leo Strine, and the co-executive directors of the HLS Program on Corporate Governance, Scott Hirst LL.M. ’01 and Holger Spamann LL.M. ’01 S.J.D. ’09.

- Amy Wyeth