



HARVARD LAW SCHOOL
Program on Corporate Governance
Report of Activities, July 1, 2005 – June 30, 2006

The Program on Corporate Governance seeks to contribute to policy, public discourse, and education in the area of corporate governance. It seeks to advance this mission in two inter-related ways:

- **Bridging the Gap between Academia and Practice:** The Program seeks to foster interactions between the worlds of academia and practice that will enrich both. Such interactions can enable academic researchers to understand better the questions and the environment that practitioners face and thereby enable a research that will be more relevant for practice, make public and private decision-makers better informed about research activities in corporate governance, and enrich the public discourse on corporate governance.
- **Fostering Policy-Relevant Research:** The Program fosters empirical and policy research that can shed direct light on the corporate governance questions that public and private decision-makers face. By providing directly relevant research that is both grounded in the best methods of academic research and impartial, such research projects can have an important impact on decision-making and public discourse in this area.

The program's academic committee consists of Professors Lucian Bebchuk, John Coates, Allen Ferrell, Reinier Kraakman, Mark Roe, and Guhan Subramanian. The program also has an advisory board, which consists of Peter Atkins, Joseph Bachelder, Byron Georgiou, Theodore Mirvis, Robert Monks, James Morphy, Toby Myerson, and Paul Rowe. The Program's director is Professor Lucian Bebchuk and its administrative assistant is John Mahoney, jomahoney@law.harvard.edu.

A great deal of information about the program is available at its website:
http://www.law.harvard.edu/programs/olin_center/corporate_governance.

The Program was established in 2003 with seed financing from the Harvard Law School John M. Olin Center for Law, Economics, and Business, and it remains affiliated with the Center. During 2005-2006 the Program had the activities described below; the Program plans to have activities in all these areas during 2006-2007.

A. Working Paper Series

The Program sponsors a series of working papers in corporate governance. During 2005/2006, the following fourteen working papers were issued:

A Political Economy Model of Investor Protection

Lucian Bebchuk and Zvika Neeman, 7/2005.

http://www.law.harvard.edu/faculty/bebchuk/pdfs/Political%20Economy%20Model_03-06-06_B103.pdf

*Variation in the Intensity of Financial Regulation:
Preliminary Evidence and Potential Implications*

Howell E. Jackson, 8/2005.

<http://ssrn.com/abstract=839250>

*An American Perspective on the U.K. Financial Services Authority:
Politics, Goals and Regulatory Intensity*

Howell E. Jackson, 8/2005.

<http://ssrn.com/abstract=839284>

*Corporate Governance Changes in the Wake of the Sarbanes-Oxley Act:
A Morality Tale to Policymakers Too*

Robert Charles Clark, 9/2005.

<http://ssrn.com/abstract=808244>

Stock Exchanges at the Crossroads:

Competitive Challenges - Reorganization - Regulatory Concerns

Andreas M. Fleckner, 10/2005.

<http://ssrn.com/abstract=836464>

Pay without Performance: Overview of the Issues

Lucian A. Bebchuk and Jesse M. Fried, 10/2005.

<http://ssrn.com/abstract=761970>

The Myth of the Shareholder Franchise

Lucian A. Bebchuk, 10/2005.

<http://ssrn.com/abstract=829804>

Trade Credit, Bank Loans, and Monitoring: Evidence from Japan

Yoshiro Miwa and J. Mark Ramseyer, 10/2005.

<http://ssrn.com/abstract=843526>

Firm Expansion and CEO Pay

Lucian A. Bebchuk and Yaniv Grinstein, 11/2005.

<http://ssrn.com/abstract=838245>

*Towards a True Corporate Republic:
A Traditionalist Response to Lucian's Solution for Improving Corporate America*
Leo E. Strine, Jr., 2/2006.
<http://ssrn.com/abstract=883720>

Letting Shareholders Set the Rules
Lucian Bebchuk, 3/2006.
<http://ssrn.com/abstract=891823>

Symposium on Director Liability
Lucian Bebchuk, Joseph Bachtelder, Roel Campos, Byron Georgiou, Alan Hevesi, William Lerach, Robert Mendelsohn, Robert Monks, Toby Myerson, John Olson, Leo Strine, and John Wilcox, 3/2006.
<http://ssrn.com/abstract=890773>

On the Insignificance and/or Endogeneity of La Porta et al.'s 'Anti-Director Rights Index' under Consistent Coding
Holger Spamann, 3/2006.
<http://ssrn.com/abstract=894301>

Foreign Trading Screens in the United States
Howell E. Jackson, Andreas M. Fleckner and Mark Gurevich, 6/2006.
<http://ssrn.com/abstract=921435>

B. Journal Articles

During 2005/2006, articles on corporate governance published by faculty members and fellows associated with the program included:

Bebchuk, Lucian, "Letting Shareholders Set the Rules," 119 *Harvard Law Review* 1784-1813 (2006).

Bebchuk, Lucian Arye, Oren Bar-Gill, and Michal Barzuza, "The Market for Corporate Law," 162 *Journal of Institutional and Theoretical Economics* 134 (2006)

Bebchuk, Lucian, and Alma Cohen, "The Costs of Entrenched Boards," 78 *Journal of Financial Economics* 409-433 (2005).

Bebchuk, Lucian, and Jesse M. Fried, "Pay without Performance: Overview of the Issues," 30 *Journal of Corporation Law* 647-673 (2005); 17 *Journal of Applied Corporate Finance* 8-22 (2005); *Academy of Management Perspectives* 5-24 (2006).

Bebchuk, Lucian, and Jesse M. Fried, "Executive Compensation at Fannie Mae: A Case Study of Perverse Incentives, Nonperformance Pay, and Camouflage," 807 *Journal of Corporation Law* 807-822 (2005).

Bebchuk, Lucian, and Yaniv Grinstein, "The Growth of U.S. Executive Pay," 21 *Oxford Review of Economic Policy* 283-303 (2005).

Bebchuk, Lucian, and Robert Jackson, "Executive Pensions," 30 *Journal of Corporation Law* 823-855 (2005).

Bebchuk, Lucian Arye and Richard A. Posner, "One-Sided Contracts in Competitive Consumer Markets," 104 *Michigan Law Review* 827 (2006)

Elhauge, Einer R., "Sacrificing Corporate Profits in the Public Interest," 80 *New York University Law Review*, 733-869 (2005).

Fleckner, Andreas M., "Stock Exchanges at the Crossroads: Competitive Challenges - Reorganization - Regulatory Concerns," 74 *Fordham Law Review*, 2541-2620 (2006).

Kraakman, Reinier H. and Ronald J. Gilson, "Clark's Treatise on Corporate Law: Filling Manning's Empty Towers," 31 *The Journal of Corporation Law* 599 (2006).

Kraakman, Reinier and Ronald J. Gilson. "Takeovers in the Boardroom: Burke versus Schumpeter," 60(4) *The Business Lawyer* 1419 (August 2005)

Kraakman, Reinier, Henry Hansmann and Richard Squire. "Law and the Rise of the Firm," 119(5) *Harvard Law Review* 1335 (March 2006)

Kraakman, Reinier, Henry Hansmann and Richard Squire. "The New Business Entities in Evolutionary Perspective," 1 *University of Illinois Law Review* 5 (2005)

Miwa, Yoshiro and J. Mark Ramseyer, "Toward a Theory of Jurisdictional Competition: The Case of the Japanese FTC," 1 *Journal of Competition Law & Economics* 247 (2005).

Miwa, Yoshiro and J. Mark Ramseyer, "Does Relationship Banking Matter? The Myth of the Japanese Main Bank," 2 *Journal of Empirical Legal Studies* 261 (2005).

Miwa, Yoshiro and J. Mark Ramseyer, "Who Appoints Them, What Do They Do? Evidence on Outside Directors from Japan," 14 *Journal of Economics & Management Strategy* 299 (2005).

Miwa, Yoshiro and J. Mark Ramseyer, "Conflicts of Interest in Japanese Insolvencies: The Problem of Bank Rescues," 6 *Theoretical Inquiries in Law* 301 (2005).

Ramseyer, J. Mark and Yoshira Miwa, "Japanese Industrial Finance at the Close of the 19th Century: Trade Credit and Financial Intermediation," 43 *Explorations in Economic History* 94 (2006).

Ramseyer, J. Mark. "Economizing Legal D-B8," 2 *Berkeley Business Law Journal* 25 (2005).

Ramseyer, J. Mark and Eric B. Rasmusen, "The Case for Managed Judges: Learning from Japan after the Political Upheaval of 1993," 154 *University of Pennsylvania Law Review* 1879 (2006).

Roe, Mark J., "Delaware's Politics," 118 *Harvard Law Review*, 2491-2543 (2005).

Roe, Mark J., "The Inevitable Instability of American Corporate Governance," 1 *The Corporate Governance Law Review* (2005)

Roe, Mark J., "The Institutions of Corporate Governance," *Handbook of New Institutional Economics*, 371-399. (2005).

Roe, Mark J., "Regulatory Competition in Making Corporate Law in the United States – And Its Limits," 21 *Oxford Review of Economic Policy* 232 (2005)

Strine, Leo E. Jr., "Towards a True Corporate Republic: A Traditionalist Response to Lucian's Solution for Improving Corporate America," 119 *Harvard Law Review*, 1759 (2006).

Subramanian, Guhan, "Fixing Freezeouts," 115 *Yale Law Journal*, 3-70 (2005).

It is worth noting that articles by four faculty members affiliated with the program on corporate governance were named among the top ten corporate and security law articles of 2005 in an upcoming issue of the *Corporate Practice Commentator*, a quarterly journal that reprints articles about corporations law. The articles were selected based upon a survey of corporate and securities law teachers across the nation. No other law school had more than one faculty member represented on the list. The articles selected were:

"The Case for Increasing Shareholder Power" by Lucian Bebchuk, published in 118 *Harvard Law Review*, 833-917 (2005).

"Sacrificing Corporate Profits in the Public Interest" by Einer Elhauge, published in 80 *New York University Law Review*, 733-869 (2005).

"Delaware's Politics" by Mark Roe, published in 118 *Harvard Law Review*, 2491-2543 (2005).

"Fixing Freezeouts" by Guhan Subramanian, published in 115 *Yale Law Journal* 2-70 (2005).

2005/2006 was the seventh straight year that an article from an HLS professor has been honored, and the sixth year in a row that HLS has had multiple selections.

C. Electronic Mailing List

The Program has developed an electronic mailing list to announce working papers, publications, and corporate governance announcements. At present, there are over 95,000 recipients on the program's mailing list:

- Over 20,000 academics in Law, economics, and business schools
- Over 75,000 practitioners with corporate governance interests including lawyers, public officials, business people, media, etc.

Individuals who wish to join the list can do so electronically at:

http://www.law.harvard.edu/programs/olin_center/corporate_governance/mailing1.htm.

D. Events

The Program sponsors presentations by outside speakers in the corporate governance field. Most of the 2005/2006 presentations were given in four forums:

- The law, economics, and organizations seminar, which is given jointly with the economics department and the business school and focuses on the corporate governance area.
- The law and economics seminar, which devotes some of its sessions to this area.
- The law and finance seminar.
- The mergers and acquisitions course.

During 2005/2006, the following presentations were made:

- Sep. 21, 2005: *Robert Monks* (Lens Governance Advisors)
Capitalism Without Owners Will Fail
- Sep. 26, 2005: *Joseph Bachelder* (Bachelder Law Offices)
Executive Compensation - Joseph Bachelder's Perspective
- Sep. 26, 2005: *Ravi Singh* (Harvard University)
Board Independence and the Design of Executive Compensation
- Oct. 3, 2005: *Dennis C. Mueller* (University of Vienna Economics Department) The Effects of
Ownership Concentration and Identity on Investment performance
- Oct. 5, 2005: *Robert Mendelsohn*
US and UK Corporate Governance
- Oct. 10, 2005: *Luigi Zingales* (Harvard University)
The Corporate Governance Role of the Media

- Oct. 17, 2005: *Holger M. Mueller* (NYU Business School)
Concentrated Ownership and Labor Relations
- Oct. 18, 2005: *Paul Mahoney* (Virginia)
Mandatory Versus Contractual Disclosure in Securities Markets: Evidence from the 1930s
- Oct. 18, 2005: *Michael Carroll* (Davis Polk), *William Kelly* (Davis Polk), *Victor Lewkow* (Cleary Gottlieb), *Donald Wolfe* (Potter Anderson)
The Revival of “Enhanced” Scrutiny?: Mock Oral Argument of Poison Pill Case followed by panel discussion
- Nov. 3, 2005: *Leo Strine* (Delaware Court of Chancery), *John Wilcox* (TIAA-CREF), *Ted Mirvis* (Wachtell, Lipton), *John Olson* (Gibson Dunn)
Panel on the Division of Power Between Shareholders and Management
- Nov. 4, 2005: *Joseph Bachelder* (Bachelder Law Offices), *Roel Campos* (Securities and Exchange Commission), *Byron Georgiou* (Lerach Coughlin), *Alan Hevesi* (New York State Comptroller), *William Lerach* (Lerach Coughlin), *Robert Mendelsohn*, *Robert Monks* (Lens Governance Advisors), *James Morphy* (Sullivan and Cromwell), *Toby Myerson* (Paul, Weiss), *John Olson* (Gibson Dunn), *Leo Strine* (Delaware Court of Chancery), and *John Wilcox* (TIAA-CREF)
The Pros and Cons of Personal Director Liability
- Nov. 7, 2005: *Randall Morck* (University of Alberta)
Creative Destruction and the Firm-Specific Performance
- Nov. 8, 2005: *Lucian Bebchuk* (Harvard Law School)
The Myth of the Shareholder Franchise
- Nov. 8, 2005: *David Katz* (Wachtell, Lipton), *Lou Kling* (Skadden Arps), *James Morphy* (Sullivan and Cromwell), *Faiza Saeed*, (Cravath, Swaine)
The Merger as a Contract
- Nov. 14, 2005: *Bengt Holmstrom* (MIT)
Corporate Governance in Context
- Nov. 15, 2005: *Andrei Shleifer* (Harvard Economics Department)
The Law and Economics of Self-Dealing
- Nov. 21, 2005: *Raghuram G. Rajan* (IMF and NBER)
Creating Constituencies for Reform
- Nov. 22, 2005: *John Finley* (Simpson Thacher), *Dennis Hersch* (Davis Polk), *Mark Morton* (Potter Anderson), *Patricia Vlahakis* (Wachtell, Lipton)
Contract v. Fiduciary Duty Principles?: Deal Protections II Panel Discussion with outside speakers
- Nov. 28, 2005: *Daniel Wolfenzon* (NYU and NBER)
Inside the Family Firm: The Role of Families in Succession Decisions and Performance
- Nov. 29, 2005: *Marcel Kahan* (NYU)
Hedge Funds in Corporate Governance and Corporate Control

- Feb. 21, 2006: *Vikramaditya Khanna* (University of Michigan Law School)
The Economic History of the Corporate Form in Ancient India
- Feb. 28, 2006: *Assaf Hamdani* (Bar-Ilan University), *Reinier Kraakman* (Harvard Law School)
Rewarding Outside Directors
- Mar. 6, 2006: *Kenneth Ayotte* (Columbia University)
Asset-Backed Securities: Costs and Benefits of “Bankruptcy Remoteness”
- Mar. 7, 2006: *Jonathan Macey* (Yale University)
Getting the Word Out About Fraud: A Theoretical Analysis of Whistle-blowing and Insider Trading
- Mar. 20, 2006: *Christopher Snyder* (Dartmouth Economics Department)
Targeting Employees for Corporate Crime and Forbidding Their Indemnification
- May 1, 2006: *Mark Garamaise* (UCLA Anderson)
The Effects of Non-competition Agreements on Executive Compensation and Firm Investment

E. Students and Fellows

The Program seeks to foster work in the corporate governance area by students and fellows. During 2005/2006, the following student fellows did research in the corporate governance area:

Laurie Burlingame
Ryan Gavin
Benjamin Gerber
Katerina Linor
Holger Spamann
Anthony Uccellini

To encourage and recognize work by students in the corporate governance area, the Program established the Victor Brudney Prize in corporate governance. Established in honor of Professor Victor Brudney, Robert B. and Candice J. Haas Professor in Corporate Finance Law, Emeritus. This prize is awarded annually to the best student paper on a topic related to corporate governance. The amount of the prize is \$1,000. The prize committee consists of Professors Bebchuk, Kraakman, and Roe. The prize recipients in 2005/06 were:

Andrew Brasher (J.D. '06), "Substantive Consolidation: A Critical Examination"
Katerina Linos (J.D. '06), "Social Learning and the Development of Corporate Law"
Holger Spamann (SJD '06), "On the Insignificance and/or Endogeneity of La Porta et. al.'s 'Anti-Director Rights Index' Under Consistent Coding"

F. Practice and Public Policy

The Program's Advisory Board

The Program seeks to foster interaction between the HLS faculty and students and the world of practice and policy. To facilitate the connection between HLS and the world of practice and policy, the program established an advisory board of distinguished practitioners. During 2005/2005, the following served as members of the advisory board:

Peter A. Atkins (Skadden, Arps, Slate, Meagher and Flom LLP)
Joseph E. Bachelder (Bachelder Law Offices)
Byron S. Georgiou (Lerach Coughlin Stoia Geller Rudman and Robbins)
Theodore N. Mirvis (Wachtell, Lipton, Rosen and Katz)
Robert A.G. Monks (Lens Governance Advisors)
James C. Morphy (Sullivan and Cromwell)
Toby S. Myerson (Paul, Weiss, Rifkind, Wharton and Garrison)
Paul K. Rowe (Wachtell, Lipton, Rosen and Katz)

Visits by Distinguished Practitioners

During 2005/2006 the following prominent practitioners participated in the program's activities:

Joseph Bachelder (Bachelder Law Offices)
Roel Campos (Securities and Exchange Commission)
Michael Carroll (Davis Polk and Wardwell)
John Finley (Simpson Thacher and Bartlett LLP)
Byron Georgiou (Lerach Coughlin Stoia Geller Rudman and Robbins)
Dennis Hersch (Davis Polk and Wardwell)
Alan Hevesi (New York State Comptroller)
David Katz (Wachtell, Lipton, Rosen and Katz)
William Kelly (Davis Polk and Wardwell)
Lou Kling (Skadden, Arps, Slate, Meagher and Flom LLP)
William Lerach (Lerach Coughlin Stoia Geller Rudman and Robbins)
Victor Lewkow (Cleary Gottlieb Steen and Hamilton LLP)
Theodore Mirvis (Wachtell, Lipton, Rosen and Katz)
Robert Monks (Lens Governance Advisors)
James Morphy (Sullivan and Cromwell)
Mark Morton (Potter Anderson and Corroon LLP)
Toby Myerson (Paul, Weiss, Rifkind, Wharton and Garrison)
John Olson (Gibson, Dunn and Crutcher LLP)
Paul K. Rowe (Wachtell, Lipton, Rosen and Katz)
Faiza Saeed (Cravath, Swaine and Moore LLP)

Leo Strine (Delaware Court of Chancery)
Patricia Vlahakis (Wachtell, Lipton, Rosen and Katz)
John Wilcox (TIAA-CREF)
Donald Wolfe (Potter Anderson and Corroon LLP)

G. Media Coverage

Corporate governance research carried out by faculty was covered extensively by the media during 2005/06. This research was featured, among other places, in *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *The Economist*, *The Financial Times*, and *Fortune*.

The full list of the media mentions of the program's faculty and their research is as follows:

The Age.com (12/22/05)
Aflcio.org (4/6/06)
Associated Press (6/23/06, 6/27/06)
The Atlanta Journal-Constitution (7/27/05, 1/3/06)
Boston Globe (9/17/05)
Canberra Times (2/2/06)
The Capital (4/10/06)
Christian Science Monitor (7/25/05)
Corporate Control Alert (7/12/05)
Corporate Counsel (7/05)
The Corporate Counselor (11/05)
The Courier-Mail Australia (1/31/06)
Die Aktiengesellschaft (10/05)
Economist (11/24/05, 1/19/06)
Federal News Service, US News and World Report (10/5/05)
Financial Executive (10/17/05)
Financial Times (8/11/05, 11/28/05, 11/30/05, 4/6/06, 6/10/06, 6/16/06)
Forbes (2/13/06)
Fortune (1/17/06)
Journal Times On Line (6/22/06)
Knowledge@Wharton (2/8/06)
Long Island Business News (6/23/06, 6/27/06)
Los Angeles Times (12/16/05)
MarketWatch.com (4/13/06, 5/12/06, 6/16/06, 6/23/06)
The Monitor's View (1/18/06)
MSNBC, MSN Money (9/28/05)
National Law Journal (4/14/06)

New York Times (1/5/06, 1/11/06, 1/14/06, 1/18/06, 1/22/06, 2/5/06, 4/9/06, 4/15/06, 6/1/06, 6/25/06)
The New Yorker (2/6/06)
Newsday.com (7/27/05)
Oil and Gas Financial Journal (4/4/06)
Philadelphia Inquirer (1/16/06)
Plastics News (8/29/05)
The Record (1/17/06)
Riskbook.com (6/28/06)
SEC Today (4/20/06)
SocialFunds.com (4/19/06, 10/27/05)
St. Louis Post-Dispatch (8/14/05)
STL Today.com (1/18/06)
TCSDaily.com (1/24/06)
Townhall.com (1/12/06)
U.K. Sunday Times (1/22/06)
USA Today (4/10/06)
Wall Street Journal (7/13/05, 7/19/05, 1/11/06, 1/21/06, 1/23/06, 4/4/06, 6/1/06, 6/26/06)
The Washington Post (1/17/06)

More details about the media coverage of the program's faculty and research can be found at:
http://www.law.harvard.edu/programs/olin_center/corporate_governance/media.htm