

Syllabus for Half Course on Corporate Boards: Responsibilities and Functions
15.S09 (6 credits), Spring 2017 H2 (M and W from 10:00am to 11:30am), E62-250

Contact Information

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Course Materials

Course reader available on study.net
Additional reading materials posted to stellar
Laptops permitted in class for viewing reading material only

- **This half course will be graded by letter. Listeners will not be allowed.**
- **Prerequisites are 15.401 and 15.402 for MBAs and the equivalents for MFins and Sloan Fellows – but students with only 15.401 will be admitted if space is available.**
- **Graduate P/D/F Option will not be allowed.**
- **There will be a final exam during the final exam week in May.**

The grade will be based 65% on the final exam, and 35% on class participation.
You will generally NOT be required to submit answers to the assignment questions; these are study guide questions to help you prepare for class.

Course Summary

This half course on corporate boards provides a practical guide to the responsibilities of directors at businesses – in both the dispersed shareholder model where public shareholders elect the board to hold management accountable, and in the control shareholder model where the board and management are chosen by a family, government or financial institution.

The half course will begin by examining the board’s responsibilities in operating the business—setting overall strategy, choosing a CEO and overseeing its financial reporting. Next, it will review the board’s role in raising capital for a new or growing business, and in setting executive compensation including stock awards and cash bonuses. Finally, it will analyze the role of the board in situations involving changes in control – hostile bids in contested takeovers and campaigns by activist hedge funds.

The half course will be based primarily on actual case studies together with supplemental materials from current articles and applicable regulations. It will focus on the role of the board committees – nominating, audit and compensation – where much of the work of the board is actually done. It will be highly interactive with lots of discussion and debate, and pragmatic with systemic analysis of action alternatives.

Class Schedule, Readings and Study Guide Questions

Class 1. April 3, 2017

The dispersed shareholder model of corporate governance, where public shareholders elect directors to hold management accountable

Readings

1. Salter, "Notes on Governance and Corporate Control," Journal of Strategic Management Education I (1). Only these pages – **NOTE: do NOT read the entire article, please only read the following:** bottom of 7-9, bottom of 42-50
2. "These People are Fiduciaries ...," HBS Case N9-314-067 (November 6, 2013)

Questions to help you prepare for class

1. How would you evaluate the effectiveness of corporate boards, versus other methods of holding management accountable – such as capital, labor or product markets?
2. How would you define the duties of care and loyalty of a corporate director or general partner of a business?
3. Did the directors of Trans Union or Walt Disney violate their fiduciary duties? Why or why not?

Class 2. April 5, 2017

The control shareholder model of corporate governance, where directors and management are selected by the control group

Readings

1. "FAG Kugelfischer – A German Restructuring," HBS Case 9-298-046 (Rev. November 10, 2004)
2. Bebchuk, "Aliaba's Governance Leaves Investors at a Disadvantage," NY Times (September 16, 2014)

Questions to help you prepare for class

1. Was family control of Kugelfischer a significant factor in causing the company's major problems?
2. May or must a board in Germany or the US take into account the interests of stakeholders such as employees, suppliers and the local community?
3. What will be the fiduciary duties of the Alibaba board as a public company to its shareholders and other stakeholders?

Class 3. April 10, 2017

The nominating-governance committee in a publicly traded corporation, including selecting directors and structuring the board process

Readings

1. Monsanto, Nominating and Corporate Governance Committee Charter
2. Applied Industrial Technologies, Director Independence Standards
3. NYSE Listed Company Manual, 303A.03, Executive Sessions
4. Lublin, "Are Smaller Boards Better for Investors?," WSJ, B-7 (August 27, 2014)

5. Wiersema and Mors, "What Board Directors Really Think of Gender Quotas," Harvard Business Review (November, 2016)
6. Pozen, "Before You Split That CEO/Chair," Harvard Business Review (April 2006)
7. SEC, "Spotlight on Proxy Matters – The Mechanics of Voting" (October 16, 2014)
8. Pozen, "Corporate Boards Need to Abolish Mandatory Retirement," WSJ (October 25, 2016)

Questions to help you prepare for class

1. How would define an "independent" director? Do you believe that more independent directors on a board would result in better corporate performance?
2. What are the functions of executive sessions of a board? Should they be led by the lead independent director or an independent Chairman of the board?
3. What are the arguments for and against having a board with relatively few directors?
4. What are the arguments for and against requiring a specific percentage of women directors?
5. What is the difference between majority and plurality voting for directors?
6. Are you in favor of mandatory retirement or term limits for directors?

Class 4. April 12, 2017

CEO succession and the governance of a family corporation

Reading

1. Bush Brothers & Company, HBS Case 9-311-052 (September 24, 2010)

Questions to help you prepare for class

1. Do you agree with the decision to recruit a majority of outsiders to the board? What types of people did he recruit?
2. What were the major changes pushed by Jim Either? How did they deal with the multiple constituencies of the company?
3. At the end of the case, what are Jim's available alternatives for the next CEO? What would you recommend that he do?
4. Suppose the CEO of a company died in a car accident – what should the board of that company do?

Class 5. April 19, 2017

Financial oversight by the audit committee and board of directors

Reading

1. The Fall of Enron, HBS Case N2-109-039 (Rev. September 19, 2013)

Questions to help you prepare for class:

1. How sound was the business strategy developed by Enron for gas and other businesses?
2. How did the internal systems and processes support or inhibit Enron's implementation of its strategy?
3. How would you evaluate the effectiveness of the audit committee in Enron?
4. Did the composition or compensation of the board contribute to Enron's failure?

Class 6. April 24, 2017

Evaluating the reforms to financial controls and the audit process

Readings

1. JP Morgan, Audit Committee Charter
2. Gibbons, Summary of the Sarbanes Oxley Act of 2002 (August 20, 2002)
3. Rapoport, "EU Rules are Liable to Complicate Audits," WSJ at C-3 (May 14, 2014)
4. Pozen, "How to keep audit committees in the know," Financial Times (January 27, 2011)
5. The Investment Association, "Supporting UK Productivity with Long-Term Investment," pages 15-17 (March 2016)

Questions to help you prepare for class:

1. Would any of the reforms enacted by the Sarbanes Oxley Act have prevented Enron's failure?
2. What are the arguments for and against a requirement for a periodic change in a company's external auditor?
3. Should the audit committee hold private sessions with the external auditor or anyone else?
4. What role should the audit committee play in handling complaints from whistle blowers?
5. What are the pros and cons of quarterly earnings reports?

Class 7. April 26, 2017

Introduction to various forms of executive compensation

Readings

1. Pozen, "Summary of Tax-Related Issues for Stock Options and Performance Shares"
2. "Execs put on 'top hat' plans," Investment News (August 18, 2013)
3. "Fiorina out, HP stock soars," CNN Money.com (February 10, 2005)
4. Corporate Reform Elements of the Dodd-Frank Act, HBS 9-311-091 (February 1, 2011)
5. Towers Watson, "What's a Fair Sharing Rate for CEO Pay?," (September 17, 2014)
6. Semler Brossy, "2015 Say on Pay Results," pages 1-5 (January 27, 2016)
7. PayScale Human Capital, "CEO Pay: How Much Do CEOs Make Compared to Their Employees?"
8. Pozen, "Compensation Committee Reports"

Questions to help you prepare for class

1. What are the key differences between stock options and restricted shares?
2. What are the key differences between a 401k plan and a top hat plan?
3. What are the pros and cons of golden parachutes?
4. Should say on pay votes by shareholders be advisory or binding?
5. What are the concerns about compensation consultants to boards?
6. What measures would you support for "fair sharing" between CEOs and their employees?
7. Do you favor public disclosure of the ratio of CEO pay to average worker pay?
8. Should a compensation committee use Non-GAAP operating income or TSR - total shareholder returns (stock price increase or decrease plus dividends) over the last three years?

Class 8. May 1, 2017

A case study in executive compensation and corporate boards

Readings

1. Aubrey McClendon's Special Incentive Compensation at Chesapeake Energy (A), HBS 9-110-047 (Rev. April 8, 2013)

Questions to help you prepare for class

1. How would you evaluate Aubrey's performance in 2008?
2. As a member of the compensation committee, how would you think about the various elements of his compensation package?
3. Has Aubrey or any other director violated his fiduciary duty to the company?

Class 9. May 3, 2017

Starting a company and raising capital

Readings

1. "Taxing Businesses Through the Individual Income Tax" (December, 2012)
2. Orrick Law Firm, "Jumpstart Our Business Startups Act – Implications for Issues and Financial Institutions" (April 3, 2012)
3. Broughman, "Investor Opportunism and Governance in Venture Capital," <http://ssrn.com/abstract=1364133>
4. Glossary of terms (compiled by Chris Alexander, October 2014)

Questions to help you prepare for class

1. What are the tax and governance differences between starting a business as a C corporation versus a pass-through entity?
2. What advantages are provided by the JOBS Act for entrepreneurs who want to raise capital in a private or public offering?
3. If you wanted to raise \$15 million from a venture capital firm, what would be the key governance issues you would likely have to negotiate with the firm?

Class 10. May 8, 2017

Negotiating with venture capitalists

Readings

1. WebTracker, HBS Case 9-915-543 (February 18, 2015)

Questions to help you prepare for class

1. Looking at the cap table at the back of the case, how would you compare the economics of the deal offered by the two VCs from the perspective of the founders? How would you make this an apples-to-apples comparison?
2. After the initial capital infusion by one of the venture capitalists, how will the board be composed? How will the board's decision making process differ from that in the dispersed shareholder model or family-state controlled model?

3. What are the key substantive and procedural ground rules for the day to day operations of WebTracker such as making a small acquisition or leasing a new building? How would decisions be made by WebTracker on hiring of employees, setting their compensation?
4. What are the rights of the venture capital firm—depending on which is selected—if WebTracker:
 - a. Sells new equity to someone other than the venture capital firm?
 - b. Launches an initial public offering for 25% of the company?
 - c. Sells the whole company to a strategic buyer like Google?

Class 11. May 10, 2017

Hostile takeovers in the US

Readings

1. Oracle v. PeopleSoft (A) HBS Case 306-058 (Rev. February 8, 2006)
2. Richard Hall, United States of America Takeover Guide, pages 1-8 (Cravath, Swaine & Moore LLP 2009)

Questions to help you prepare for class

1. What is your appraisal of Oracle's initial bid -- good, bad or evil?
2. How would you assess Conway's initial reactions to Oracle's bid?
3. As a member of the PeopleSoft Board, what would be your view of:
 - a. Recasting the JDEC deal
 - b. Invoking the poison pill, and
 - c. Ratifying the CAP Program?

Class 12. May 15, 2017

Hostile takeovers in Europe

Readings

1. Mannesmann AG, HBS Case 9-401-013 (August 7, 2000)
2. Essentials of Public Takeovers in Germany, Norton Rose Fulbright (August, 2009)

Questions to help you prepare for class

1. Did the telecom strategies of Mannesmann and Vodaphone fit together?
2. What takeover defenses did Mannesmann employ and NOT employ?
3. How were takeover bids viewed in Germany versus the UK and the US?
4. How did these views affect Mannesmann's reactions to the Vodaphone bid?

Class 13. May 17, 2017

Pressures from activist hedge funds

Reading

1. Genzyme and Relational Investors: Science and Business Collide? UV 6529. (Rev. Aug 30, 2012)
2. Wachtell, Lipton, Rosen & Katz, "Winning a Proxy Fight – Lessons from the DuPont-Trian Vote" (May 18, 2015)

Questions to help you prepare for class

1. In the 5 years before this case, did the board do a good job in overseeing Genzyme?
2. How would you evaluate the role played by Relational Investors in this case?
3. What is the relationship between activist hedge funds and more traditional institutions like mutual funds and pension funds?
4. What happened after the DuPont CEO defeated the activist campaign to replace 4 company directors?

Final Exam – The Final Exam will be held for 3 hours at a designated time in the week of May 22-26. You will be able to take the exam from any place in the world, but at same exact time.