

**Institutional
Investor**



The Evolving Fiduciary Obligations of Pension Plans: Understanding the New Era of Corporate Governance



February 2, 2010
The Westin Grand
Washington, DC

The Evolving Fiduciary Obligations of Pension Plans: Understanding the New Era of Corporate Governance

A wave of corporate malfeasance followed by a severe recession has intensified concerns about the obligations of businesses—and the pension funds that invest in them. The cases of Enron, Tyco, WorldCom and other corporate scandals led to the Sarbanes-Oxley legislation, putting new emphasis on the establishment of internal controls and the expansion of financial disclosure. The practices of many financial institutions, which helped unleash the “Great Recession,” have reinvigorated efforts to ensure that corporations take their obligations to investors seriously, and the Boards of funds are facing increased scrutiny from their pensioners.

In this environment, institutional investors are also being held to a higher standard. They are owners of the corporations whose shares they purchase, and it is no longer adequate to take the Wall Street Walk—to sell securities rather than take issue with corporate managers. But since investments have become global in nature, and demands for closer scrutiny of those investments have risen to greater heights, it is essential that pension plan sponsors understand both the full array of their responsibilities, as well as how to meet them. This means knowing what policies and procedures are necessary to fulfill those commitments and recognizing the resources essential to avoid costly errors.

While in recent years many plan sponsors have become increasingly involved in issues of corporate governance, moving from divestment to engagement with corporate managements, and the pursuit of legal remedies in order to enforce their rights, they have also sought to emplace practices and unambiguous guidelines to prevent mistakes from occurring.

This more active approach to corporate governance by plan sponsors brings complexities, particularly when it comes to monitoring the activities of their investment managers and the companies in which they invest. But it can also bring substantial benefits by avoiding inappropriate investments and by obtaining compensation from companies that have engaged in practices that have proven harmful to their investors, which is an obligation as much as a right.

The Evolving Fiduciary Obligations of Pension Plans conference, will offer a review of the key issues that the legal advisors of pension plans must understand in order to serve their public pension plan employers and clients. It will offer balanced perspectives on how fiduciaries can best meet their objectives and circumvent problems, as well as provide information and guidance on the legal options available to resolve issues as they arise. Over the course of this day-long event, attendees will hear from a combination of peers and outside experts who will share their knowledge, experience, and

ideas about the most critical issues facing funds, their legal counsel, and their Boards.

Tuesday, February 2, 2010

8:00-8:45 am **Registration and Continental Breakfast**
Washington Ballroom Foyer

8:45-9:00 am **Opening Remarks and Introductions**
Washington Ballroom

Roundtable Moderator:
Harvey Shapiro
Senior Advisor

Institutional Investor

9:00-10:00 am Panel Discussion: **Understanding the Evolving Nature of Corporate Fiduciary Responsibility**
Washington Ballroom

Panelists:
Stephen Davis
Executive Director and Lecturer
Millstein Center for Corporate Governance & Performance
Yale School of Management

Janice Hester-Amey
Portfolio Manager, Corporate Governance
CalSTRS

Susan Mangiero, PhD, CFA, FRM
Chief Executive Officer and Founder
Investment Governance, Inc.

The remarkable events of the past two years have created a public backlash against the financial services industry and, to a lesser extent, large corporations generally. Some of this fury has been appropriate and some less so, but in response there are developing legislative initiatives as well new guidelines and best practices fiduciaries must consider. Now, with a new Administration in Washington there is expected to be a more proactive Department of Labor and new rules and laws that will be enforced more vigorously. This comes, moreover, in a post-Sarbanes-Oxley world that created a variety of new demands on public company executives and directors and increased the pressure on shareholders to monitor their investments more closely. The opening panel will put these events into context as the backdrop to describe how they are influencing the debate on

corporate fiduciary responsibility and to identify the key issues shareholders must consider in reviewing their corporate holdings.

10:00-10:30 am Coffee Break
Washington Ballroom Foyer

10:30-11:30 am Panel Session: **Appreciating the New Emphasis on Evaluating Risks to Sustainable Performance**
Washington Ballroom

Panelists:

Dr. Robert M. Mark
Founding Chief Executive Officer
Black Diamond Risk

Karen Mazza
General Counsel
NYCERS

Steve Rochlin
Senior Partner
AccountAbility

Edward Waitzer
Director of Hennick Centre for Business and Law
York University

Shareholders have begun to recognize that environmental, social and governance (ESG) factors can have a substantial influence on corporate valuations. But what does this mean for plan sponsors? What risks do they pose for corporations that fail to properly assess and deal with the various related issues that can impact their performance? How significant are these risks and how can plan sponsors proactively identify, evaluate the prioritize numerous ESG factors and make them part of their investment decision-making process? How should these criteria be used in determining such things as valuation and integrated into the risk management process? In this session panelists will discuss how ESG considerations are being incorporated into the investment management practices of plan sponsors and review what this infers for plan sponsors.

11:30-12:30 pm Panel Session: **Changing Proxy Access Rules: Debating What Will Make Effective Reforms**
Washington Ballroom

Panelists:

Luke Bierman
General Counsel
Office of New York State Comptroller

Patrick McGurn
Special Counsel
RiskMetrics Group

Catherine E. LaMarr
General Counsel
Office of the Connecticut State Treasurer

The SEC has delayed a decision on a proposed rule (Rule 141-11) that would boost the power of activist shareholders by allowing them almost unfettered access to a company's annual proxy materials to solicit other shareholders and sway their votes. But despite putting off a vote on the proposal there appears to be enough momentum within the regulatory body to take some action on the issue in the year ahead. Ensuring a stronger voice for shareholders, activists as well as those frustrated with recalcitrant boards who are unresponsive to legitimate concerns, argues in favor of the rule as it has been put forth. At the same time, there are valid concerns that such a rule could be abused in ways that fail to help either companies or their shareholders. In this session panelists will discuss and debate whether it would be more or less beneficial to adopt the rule as-is, or whether there are other reforms that should be considered that might be more effective at generating change and balancing interests.

12:30-1:00 pm Presentation: **The Next Phase in the Environmental Liability**
Washington Ballroom

Presented by:
Stuart L. Berman
Partner
Barroway Topaz Kessler Meltzer & Check, LLP

Environmental concerns are growing and receiving what may be unprecedented attention. This is due both to the potential dangers of climate change associated with carbon emissions, as well as to the fast pace at which developing nations are increasing their output to meet consumer demand both domestically and internationally. Intensified activities related to producing, transporting and providing various goods and services means that companies' environmental impact may become greater, and damages more frequent, even as global competition creates pressure to cut corners and disclose minimal information to avoid costly remedies. The speaker in this session will assess what these developments may mean as it regards possible litigation trends related to environmental disclosure statements and how companies respond in addressing environmental concerns.

1:00-2:15 pm Lunch
Promenade

2:15-3:15 pm

Panel Session: Say on Pay: How to Play a Meaningful and Effective Role

Washington Ballroom

Panelists:

Hye-Won Choi

Senior Vice President and Head of Corporate Governance

TIAA-CREF

Christopher R. DiFusco, Esquire

Divisional Deputy City Solicitor, Pension & Investment Unit

City of Philadelphia Board of Pensions and Retirement

Victoria Halliday, J.D.

General Counsel

Denver Employees Retirement Plan

The economic meltdown and the political and social forces it unleashed has resulted in raising public awareness about perceived excessive executive compensation to unheard of levels. While many shareholders are frequently reluctant to take an overt and proactive role in executive compensation issues, this heightened scrutiny makes it necessary to be more attentive and involved in this issue. Panelists in this session will discuss ways in which shareholders can most effectively influence executive compensation to balance the interests of all parties and ensure that senior managers are properly and fairly rewarded in ways that reflect underlying performance and a long-term outlook.

3:15-3:45 pm

Presentation: Executive Compensation and Derivative Litigation: Initiatives and Results

Washington Ballroom

Presented by:

Michael Wagner

Partner

Barroway Topaz Kessler Meltzer & Check, LLP

What are the most important developments plan sponsors need to recognize as they relate to derivative litigation and their relation to executive compensation issues? How can these actions be utilized to reach the outcomes shareholders seek? What is their proper role and when are they most appropriate to consider? The speaker in this session will provide a broad overview that will examine the key trends among litigants pursuing derivative litigation and outline the primary issues shareholders need to consider before deciding on a course of action.

3:45-4:00 pm Coffee Break
Washington Ballroom Foyer

4:00-5:00 pm Panel Session: **Affirmative Litigation: Deciding When to Become an Active Litigant and Selecting the Best Course of Action**
Washington Ballroom

Moderator:

Darren J. Check
Partner

Barroway Topaz Kessler Meltzer & Check, LLP

Panelists:

Robert Gaumer
Chief Counsel

Alameda County Employees' Retirement Association

Keith Johnson

Chairman, Reinhart Institutional Investor Services
Reinhart Boerner van Deuren s.c.

David Kessler

Partner

Barroway Topaz Kessler Meltzer & Check, LLP

John Milazzo

Chief Deputy Executive Director and General Counsel
Maine Public Employees Retirement System

Deciding to become a plaintiff in a class action lawsuit is no easy matter. The time it will require, the potential for success, the possibility of unwanted public scrutiny, whether to become a lead plaintiff or opt-out for playing a supportive role instead. . .these and many other factors must be assessed and debated before determining whether litigation is the proper path to follow. Panelists in this session, representing plan sponsors who have participated in class actions, will discuss the issues that need to be considered when contemplating an active role as a litigant, including when it's important to assume the role of a lead plaintiff. They will review the various options available and evaluate how to select the best course of action based on specific circumstances.

5:00-6:00 pm Special Guest Presentation: **Restoring Investor Confidence**
Washington Ballroom

Guest Speaker:

Richard Breeden

Founder
Breeden Partners
Former *Corporate Monitor*, **WorldCom, Inc.**
Former *Chairman*, **United States Securities and
Exchange Commission**

Introduced by:
Robert D. Feinstein
Chief Investment Officer
Maryland State Retirement and Pension System

Richard Breeden is one of those rare individuals who has extensive and longstanding experience with issues of corporate governance through his dealings with the aftermath of scandals involving both mismanagement and financial fraud. His prominent role as the Corporate Monitor of Worldcom Inc. following that company's accounting scandal, which led to what was then the largest corporate bankruptcy filing in U.S. history, was widely praised. In that position, as well as an activist investment manager, along with his experience as a high-ranking official with influence over financial regulations and economic policy, Mr. Breeden brings a wealth of expertise and knowledge to bear on a variety of head-lining issues that investors are struggling with today. His ability to both grasp the essence of the problems we face as it relates to corporate governance and investor confidence is broadly acknowledged, as is his skill in recommending common sense ways to address them.

6:00-7:00 pm Cocktail Reception
Washington Ballroom Foyer

7:00 pm Sessions Conclude

