EUROPEAN SHAREHOLDER ACTIVISM IN GLOBAL MARKETS AFFECTING WORKFORCE ISSUES

AN OVERVIEW OF SELECTED EUROPEAN LAWS

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INTRODUCTION

Workers' rights, human rights and corporate governance are inextricably linked in today's modern, globalized economy. In recent years, many institutional investors have come to the realization that it is in their interests as fiduciaries to seek to influence the corporate behavior of the companies in which they invest. This activism is motivated by the growing consensus that well-governed companies provide increased long-term investment returns.[2] Further, institutional investors increasingly recognize that a company's stakeholders include not only its shareholders, but also its employees, customers, and any other individuals impacted by the company's activities.[3]

As detailed below, institutional investors are increasingly using their large ownership stakes to take a much more proactive role in the corporate governance of the companies they own. In addition to what may be termed the "traditional" areas of institutional investor activism such as executive compensation, removal of entrenched board members, separation of the CEO and Chairman roles, removal of supermajority requirements for shareholder action, and removal of management-friendly anti-takeover poison pills,[4] investors are increasingly focused on so-called environmental, social and governance issues ("ESG issues").

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[2] *See, e.g.*, Lawrence D. Brown & Marcus L. Caylor, *Corporate Governance and Firm Performance*, at 2, 7 December 2004, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=586423 (concluding that "better governed firms are relatively more profitable, more valuable, and pay out more cash to their shareholders").

[3] *See generally* Responsible Investment in Focus: How Leading Public Pension Funds are Meeting the Challenge, 2007 Report, *available at* http://www.gpf.or.th/download/general/responsible_investment_in_focus.pdf (joint report prepared by the United Nations Environment Programme Finance Initiative and the United Kingdom Social Investment Forum detailing the strategies and practices being employed by major public pension funds to integrate socially responsible investment into their investment strategies and the numerous reasons they are doing so).

[4] For example, in 2005, United Kingdom and Dutch pension funds were part of a group of institutions that filed suit against News Corporation in Delaware court over the company's decision to extend its poison pill defense without seeking shareholder approval.

Additionally, organizations traditionally viewed as having interests separate and distinct from institutional investors are increasingly succeeding in making their issues part of the dialogue between companies and investors. For example, numerous institutional shareholders have submitted shareholder proposals seeking adoption of the International Labour Organization ("ILO")[5] principles on human rights at companies in which they invest. In 2004, Lowe's Companies, Inc. was required to include a shareholder proposal brought by the New York City Employees' Retirement System and the New York City Teachers' Retirement System to adopt a corporate code of conduct based on the conventions of the ILO.[6] Similarly, in 2008 a group of European institutional investors, including a UK fund manager and a Dutch pension fund, filed a shareholder resolution demanding that Wal-Mart produce a report on the negative social and reputational impacts of its non-compliance with ILO conventions.[7]

The growing interest in socially responsible investment and ESG issues has resulted in the integration of these issues into many institutional investors' decision-making processes and the creation of organizations such as the United Nations Principles for Responsible Investing ("UNPRI") to assist with that integration and to educate investors about the significant impact ESG issues can have on long-term investment value.

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[5] The ILO was formed following World War I on the basis of three motivations, (1) humanitarian, (2) political, and (3) economic, which were written into the preamble of the organization's 1919 Constitution, which opens with the affirmation that "universal and lasting peace can be established only if it is based on social justice." In June 1998, the ILO adopted and issued its Declaration on Fundamental Principles and Rights at Work, which includes "freedom of association, effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, effective abolition of child labour, and elimination of discrimination in respect of employment and occupation."

[6] In addition to the ILO and the United Nations Principles for Responsible Investing, the ideals of organizations and treaties such as the United Nations Universal Declaration of Human Rights, the United Nations Global Compact, the United Nations International Covenant on Civil and Political Rights, and the United Nations International Covenant on Economic, Social and Cultural Rights provide are increasingly recognized as sources of corporate governance initiatives and best practices.

[7] *See* European Investors Join for Attack on Wal-Mart Labour Standards at AGM, *available at* http://www.responsible-investor.com/home/article/wal_mart/

The UNPRI began in early 2005 when then United Nations Secretary-General Kofi Annan convened a group of the world's largest institutional investors to develop a set of principles "for incorporating ESG issues into mainstream investment decision making and ownership practices."[8] The development of the UNPRI was coordinated by the United Nations Environment Programme Finance Initiative and the UN Global Compact and initially included a group of twenty institutional investors from twelve countries.[9] Importantly, a primary focus of the UNPRI is the belief that working to improve ESG issues can simultaneously result in the improved long-term performance of investment portfolios.[10]

As of 1 May 2008, approximately 360 institutions, representing over USD 14 trillion in assets were signatories to the UNPRI.[11] European institutional investors have dominated adoption of the UNPRI, with 148 signatories and approximately USD 9.7 trillion in assets compared to 70 signatories with approximately USD 2.3 trillion under management from North America.[12]

In addition to recognizing that institutional investors have "a duty to act in the best long-term interests of [their] beneficiaries" and acknowledging that ESG issues are inextricably linked to investment performance, signatories to the UNPRI "recognize that applying these Principles

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8 *See* Principles for Responsible Investment, at 2, *available at* http://www.unpri.org/files/pri.pdf.

9 *See Id.*

10 *See Id.*, *see also* Responsible Investment in Focus: How Leading Public Pension Funds are Meeting the Challenge, 2007 Report, at 83 (Noting that "[a] wide range of issues that five years ago were considered "non-financial" such as climate change, human rights and board remuneration are now coming to the fore as factors that can have a significant impact on investment value.").

11 *See* Principles for Responsible Investment, PRI Report on Progress 2008, at 4, *available at* http://www.unpri.org/files/2008PRI_Report_on_Progress.pdf.

12 *See Id.*

may better align investors with [the] broader objectives of society."[13] UNPRI signatories[14] therefore commit to the following six Principles:

1. We will incorporate ESG issues into investment analysis and decision-making processes;
2. ***We will be active owners and incorporate ESG issues into our ownership policies and practices***;[15]
3. We will seek appropriate disclosure on ESG issues by the entities in which we invest;
4. We will promote acceptance and implementation of the Principles within the investment industry;
5. We will work together to enhance our effectiveness in implementing the Principles;
6. We will each report on our activities and progress towards implementing the Principles.[16]

While numerous methods of corporate engagement exist,[17] we focus here on the most common public actions that European shareholders have taken: proxy voting, shareholder resolutions, derivative lawsuits and securities lawsuits. First, specific laws and examples are discussed in the context of proxy voting, shareholder resolutions and derivative lawsuits[18] and then securities laws dealing with fraud, securities trading and shareholder securities fraud class

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13 *See* Principles for Responsible Investment, at 4.

14 *See* Appendix at 11-15 (current list of UNPRI signatories).

15 Each Principle details possible actions UNPRI signatories can take to implement the Principles in practice. Principle 2, being the most relevant to the issues discussed herein, includes, among others, the following possible actions: (1) develop an active ownership policy, (2) exercise voting rights, (3) promote and protect shareholder rights, (4) file shareholder resolutions consistent with long-term ESG considerations, and (5) engage with companies on ESG issues. *See Id.* at 4.

16 *See Id.* at 4-5.

17 For example, particularly among European institutional investors, direct dialogue with companies is common. However, many European institutional investors view direct dialogue, along with shareholder proposals and proxy voting as the only viable options before ceasing engagement and divesting the position. For example, the Norwegian Government Petroleum Fund, the second largest pension fund in the world, divested its holdings of Wal-Mart after finding systematic violations of labour standards. On the contrary, as discussed below, additional methods exist for pursuing ESG change at publicly traded companies short of divestiture.

18 *See* Appendix at 1-10 (providing an overview of the corporate laws in Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States).

actions in Europe and the United States are discussed. Each of these discrete methods of company engagement enables institutional investors, as provided by Principle 2 of the UNPRI, to actively engage the companies in which they invest on ESG and other issues of importance to socially responsible investors.

METHODS OF INSTITUTIONAL INVESTOR ENGAGEMENT

The most commonly used tools of the activist European institutional investor both in the United States and Europe, are proxy voting and shareholder resolutions. As detailed below, most European countries allow so-called derivative lawsuits which enable investors to enforce corporate laws on behalf of the companies in which they invest.[19] However, the real-world results have been limited and very few, if any, derivative lawsuits have been pursued in most European countries.[20] The United States continues to have the most developed private enforcement system for shareholder rights and is thus the venue for the vast majority of shareholder derivative and securities fraud actions, including actions filed by European institutional investors.

On 11 July 2007, the European Union formally adopted the Directive on the Exercise of Certain Rights of Shareholders in Listed Companies (the "EU Shareholder Directive") and European Union member states must enact the EU Shareholder Directive no later than 3 August 2009.[21] Of significant importance to the first two methods of engagement discussed below, proxy voting and shareholder resolutions, the EU Shareholder Directive requires companies to

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[19] *See* Grechenig, Kristoffel & Michael Sekyra, *No Derivative Shareholder Suits in Europe – A Model of Percentage Limits, Collusion and Residual Owners*, at 2-3 (March 2007) *available* at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=933105 (noting the absence of derivative lawsuits in Europe despite their availability in nearly every European Union country).

[20] *Id.* Additionally, some European countries have adopted laws allowing litigation similar in form to the United States securities fraud class action. Securities fraud lawsuits are discussed below.

[21] *See* Council Press Release, *Corporate Governance: Directive on Shareholders' Rights Formally Adopted*, I.P. 07/800 (12 June 2007) *available at* http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm.

abide by minimum standards for shareholder notice of general meetings, provides for electronic proxy voting, removes constraints on who may act as a proxy, removes formal requirements for the appointment of a proxy, and introduces minimum standards for the right to ask questions and put items, such as shareholder resolutions, on the general shareholder meeting agenda.[22]

PROXY VOTING

One of the most important methods for institutional investors to engage with their publicly traded companies is to simply vote their shares at the annual general meeting.

European Union

The adoption of the EU Shareholder Directive is intended to streamline and remove any remaining barriers to proxy voting across the European Union.[23] The EU Shareholder Directive has several provisions applicable to proxy voting rights to ensure that shareholders are treated fairly and to remove impediments to voting. Article 7 requires all member states to "ensure the rights of a shareholder to participate in a general meeting" without being subjected to any deposit or transfer requirements as to his shares, requires companies to specify a "record date" for determination of a shareholders' right to participate in the general meeting, and proof of qualification as a shareholder can only be required as "necessary to ensure the identification of shareholders and only to the extent [] proportionate to achieving that objective."[24]

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[22] *See Id.*

[23] The rules concerning proxy voting in Switzerland are similar. The primary differences are certain restrictions on who may serve as a proxy and requirements for entry to the annual general meeting including confirmation of deposit by respective custodian banks or proof of registered ownership of shares. *See* Corporate Governance 2008, at 217.

[24] Counsel Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 On the Exercise of Certain Rights of Shareholders in Listed Companies, O.J. L. 184/17, at 21-22, Article 7 (14 July 2007) *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF.

Article 8 of the EU Shareholder Directive requires member states to permit companies to allow electronic participation in general meetings, including electronic proxy voting.[25] Article 9 allows, with certain restrictions, every shareholder to ask questions related to items on the agenda at the annual general meeting and requires companies to respond to shareholder questions.[26]

Similarly, Article 10 provides that shareholders have the right to appoint any person as their proxy to vote at the annual general meeting and any legal restrictions on this right are abolished.[27] Article 11 requires member states to permit shareholders to appoint proxy holders by electronic means and removes any formal requirement for appointment and notification of the proxy holder beyond the basic formal requirement that the appointment be notified to the company in writing.[28] Article 12 requires member states to allow companies to permit shareholders to vote via correspondence prior to the general meeting.[29] Article 13 requires the removal of any formal requirements on the authorization of a shareholder to exercise voting rights.[30] Finally, Article 14 requires companies to disclose, for each resolution voted on at the annual general meeting, the number of shares for which votes were validly cast, the proportion of share capital represented by those votes, the total number of votes cast, and the number of votes for and against each resolution.[31]

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25 *See Id.* at 22, Article 8.

26 *See Id.*, Article 9.

27 *See Id.* at 22-23, Article 10.

28 *See Id.* at 23, Article 11.

29 *See Id.*, Article 12.

30 *See Id.* at 23-24, Article 13.

31 *See Id.* at 24, Article 14.

United States

In the United States proxy voting requirements are relatively simple. All shareholders may participate in a corporation's annual general meeting and are entitled to vote in person or by proxy. The only formal requirement is that the proxy appointment be in writing, but there is no particular form that it must take. Additionally, Section 14 of the Securities Exchange Act and the corresponding SEC regulations set forth numerous substantive and procedural rules for the solicitation of shareholder votes by companies.

Examples of Shareholder Activism

Recent instances of shareholder activism concerning traditional proxy contests include CtW Investment Group's[32] recent announcement urging shareholders to vote against the reelection of directors at Morgan Stanley, Citigroup, Merrill Lynch, Bank of America, Wachovia and Washington Mutual unless they account for their efforts, or lack thereof, to understand and control those institutions' exposure to risk.

Further, the UNPRI estimates that the vast majority of signatories to the Principles voted their shares in 2007 with the percentage of signatories not voting at only 10 percent.[33] The combination of more active ownership and clarified European Union proxy and voting requirements has resulted in increased levels of proxy voting by European institutional investors.

SHAREHOLDER RESOLUTIONS

European Union

Article 6 of the EU Shareholder Directive requires member states to "ensure that shareholders [] have the right to put items on the agenda of the general meeting, provided that

[32] CtW Investment Group works with union sponsored pension funds to develop strategies and initiatives to support efforts to be responsible active owners.

[33] *See* Principles for Responsible Investment, PRI Report on Progress 2008, at 25.

each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting."[34] Additionally, shareholders must have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.[35]

Importantly, if a member state chooses to allow restrictions on shareholder resolutions based on the size of the shareholder's stake in the company it is not to exceed five percent of the share capital. Hence, any shareholder or group of shareholders with at least five percent of the share capital will be able to require a company to put items on the agenda at the annual general meeting of any European Union company.[36]

United States

In the United States, Securities Exchange Act Rule 14a-8, and the corresponding SEC regulations, provide that a shareholder, if eligible and certain procedures are followed, may require a company to present a shareholder proposal recommending or requiring that a company take action in the company's proxy materials. In addition to the procedural requirements[37] for including a shareholder proposal in the proxy statement, a company may exclude shareholder proposals on other grounds under Rule 14a-8(i). The other grounds for exclusion include, among others, (1) proposals relating to company operations which account for less than five percent of the company's total assets, less than five percent of its net earnings and sales, and is not

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[34] *See Id.* at 21, Article 6.

[35] *See Id.*

[36] Switzerland's company laws concerning shareholder resolutions are similar. The overriding difference between Switzerland and both the European Union and United States is that Swiss companies are not required to circulate dissident shareholder statements and resolutions to other shareholders.

[37] The procedural requirements of Rule 14a-8 include, among others, (1) that a shareholder continuously hold at least USD 2,000 in company shares for at least one year prior to submitting the proposal and that the shareholder continue to hold those shares, (2) that the proposal be no more than 500 words, and (3) that the proposal be submitted at least 120 days before the proxy statement is to be released to shareholders.

otherwise significantly related to the company's business, (2) proposals related to a special interest which is not shared by other shareholders at large, and (3) proposals related to the company's ordinary business operations.

Historically, the SEC utilized the "ordinary business" exclusion to exclude shareholder proposals related to social policy issues. In recent years, however, the SEC has required the inclusion of certain social policy-related shareholder proposals and the SEC's current policy is based on a case-by-case analytical approach.

Shareholder proposals must, however, receive a minimum number of votes to be allowed on the proxy the following year. Proposals must obtain three percent of the total vote their first year, six percent the second year and ten percent in the third year. If the proposal fails to meet these requirements in any year it may not be resubmitted for three years.

Examples of Shareholder Activism

Numerous European institutional investors have been active with shareholder proposals in recent years. For example, in 2006, shareholders of FirstGroup plc forced a vote on a shareholder resolution to require the company to adopt a company-wide human rights policy ensuring compliance with ILO core labour standards. One of the measure's primary backers was the Transport & General Workers Union.[38] Similarly, Goldcorp, a Canadian mining company, agreed to conduct an independent Human Rights Impact Assessment in Guatemala at the request of Canadian and Swedish shareholders after shareholders had submitted a resolution to the company.[39]

Additional examples by United States institutional investors include a proposal by the New York City Teachers' Retirement System and the Connecticut Retirement Plans and Trust

[38] *See* Ergon, Focus on Labour, Issue 5 (July 2006).

[39] *See* Investors Spur Goldcorp to Address Human Rights in Guatemala, April 24, 2008.

Fund requiring Kmart[40] to include a proposal recommending incorporation of ILO principles throughout the company's operations and a proposal by the Amalgamated Bank of New York LongView Collective Investment Fund that American Eagle adopt international human rights standards throughout its operations.[41]

In the United States, as recently as April 29, 2009, a shareholder sponsored resolution to oust Bank of America's Chairman of the Board Ken Lewis was put before shareholders. Illustrating the increasingly activist nature of institutional investors worldwide, The California Public Employees' Retirement System,[42] the largest pension fund in the United States, voted for Mr. Lewis's removal as Chairman and voted against the reelection of all 18 members of Bank of America's board of directors.[43] The unusual aspect of this shareholder vote, even in the United States, was that a majority of investors voted to remove Mr. Lewis as Chairman of the Board while a third voted to remove him from the board entirely.[44] The vote was the first time shareholders of a company in the S&P 500 Index had forced a company to strip its CEO of chairman duties.[45]

DERIVATIVE LAWSUITS

A derivative lawsuit, in its most common form, is a lawsuit brought on behalf of or in the name of a company against its board of directors. Derivative lawsuits are typically brought by a company shareholder or group of shareholders to protect a right of the company or to force the

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40 *See* SEC No Action Letter, 2001 SEC No-Act LEXIS 392 (March 16, 2001).

41 *See* SEC No Action Letter, 2001 SEC No-Act LEXIS 430 (March 20, 2001).

42 The California Public Employees' Retirement System ("CALPERS") manages retirement benefits for more than 1.6 million people and had assets under management of over USD 164 billion as of February 28, 2009. *See* Facts At A Glance: Investments and Facts At A Glance: General *available at* http://www.calpers.ca.gov/index.jsp?bc=/about/facts/home.xml

43 *See* http://www.bloomberg.com/apps/news?pid=20601087&sid=aQwfoO6oOGY8&refer=home

44 *See, e.g.*, http://www.nytimes.com/2009/04/30/business/30bank.html?th&emc=th

45 *See* http://online.wsj.com/article/SB124101668502368771.html#mod=testMod

company to take or not take a certain corporate action. Historically, derivative lawsuits have been rare in European countries. However, as many European countries adopt company laws more similar to those in the United States, the number of derivative lawsuits seeking to compel companies to enact ESG related changes may increase.

As yet, there is not uniform treatment of derivative lawsuits in the European Union. Rather, each individual country has its own varying laws and regulations regarding derivative lawsuits. As detailed below, while the United States has the most developed legal tradition of derivative lawsuits, the United Kingdom has recently adopted laws that greatly increase the likelihood that derivative lawsuits will be filed there. Other European Union countries that allow derivative lawsuits may also see increased filings as activist shareholders continue to engage companies and ESG issues gain greater prominence in the investment strategies of institutional investors.

Derivative Lawsuit Requirements

Belgium

- Derivative lawsuits are allowed by minority shareholders who, as of the date of initiation of the lawsuit, own at least one percent of the voting rights or EUR 1.25 million of the share capital.

France

- Derivative lawsuits (*actiones sociales*) are allowed and may be brought by individual shareholders (*action ut singuli*).

Germany

- Derivative lawsuits may be brought by shareholders holding at least one percent or EUR 100,000 of the share capital with the permission of the court.

Italy

- Shareholders representing at least 2.5 percent of a public company's share capital, according to the 28 December 2005 Law No. 262 may file derivative actions (*action pro societate*). However, the claims asserted may be waived at the general meeting if such a resolution is not opposed by shareholders holding at least 5 percent of the share capital.

Luxembourg

- Traditional derivative lawsuits are not allowed in Luxembourg.

Netherlands

- Traditional derivative lawsuits brought by third-party investors are not allowed but the management board may bring an action against directors for improper management. Because proceedings must be initiated by the company they are exceedingly rare.

Spain

- Derivative lawsuits are allowed when brought by shareholders owning at least five percent of the company's share capital.

Sweden

- Derivative lawsuits are allowed when brought by shareholders owning at least ten percent of the company's share capital.

Switzerland

- Derivative lawsuits are allowed in Switzerland with board members and top management being jointly and severally liable for damages caused by intentional or negligent breaches of their duties to the company.

United Kingdom

Part 11 of CA 2006 includes a new derivative action procedure in § 260 which allows shareholders to bring an action in the name of, and for the benefit of, a company against its directors. Claims may be brought on causes of action arising from an actual or even proposed act or omission involving negligence, default, or breach of trust. Additionally, CA 2006 §§ 170-181 codifies the general duties owed by directors to their companies. These rules provide for the following duties:

1. To act in accordance with the company's constitution;
2. To promote the company's success;
3. To exercise independent judgment;
4. To exercise reasonable care, skill and diligence;
5. To avoid conflicts of interest;
6. To refuse benefits from third parties; and
7. To declare an interest in a proposed transaction.

In addition, § 172 includes so-called "enlightened shareholder provisions." In making decisions pursuant to the duties detailed above, directors now must have regard for the following:

1. The likely long-term effects of their decision;
2. ***Employee interests***;
3. The need to facilitate business relationships with suppliers, customers, etc.;
4. ***The impact of the business on the environment***;
5. ***The need to maintain the company's reputation for high standards of conduct***;
6. The need for fairness between shareholders of the company; and
7. "Other matters" which are not defined in the statute.

CA 2006 contemplates derivative actions based on any of the above general duties as well as the so-called enlightened shareholder provisions of § 172. The United Kingdom was concerned that a large number of lawsuits would be brought under CA 2006 and deliberately included restrictions on the use of Part 11 that may limit the number of derivative actions filed.[46] These restrictions include a requirement that plaintiffs submit evidence of a *prima facie* case and the court must dismiss the case if the plaintiff has not done so. After a *prima facie* case has been shown, the parties have a hearing on the application where they may present evidence. At this stage, the court must refuse permission for the derivative claim to continue if: (1) a reasonable person, acting in accordance with § 172, would not continue the claim; (2) the action in question is a future act that has been ratified by the appropriate decision-making body in the company; or (3) the action was a past act that was authorized by the company before it occurred or was properly-ratified afterward. In addition, the court must consider whether bringing the action was in good faith by the claimant; whether the act in question will eventually be ratified by the

[46] Additionally, filing of derivative actions may not occur in the near-term because the statute requires the alleged wrongdoing to have occurred after § 260's effective date.

company's shareholders; and whether the company has opted not to pursue the action in question. Finally, the court must show particular regard to the views of any shareholders not personally interested in the action. If all of these requirements are satisfied, the action will proceed.

United States

Under Delaware corporate law derivative lawsuits are allowed and may be brought by any shareholder that held shares at the time of the directors' breach and who remains a shareholder throughout the pendency of the action. There are no minimum shareholding requirements. Further, the shareholder must either make a demand on the board of directors to institute the action on the company's behalf or must plead that demand was futile and is thus excused.

Examples of Shareholder Activism

Derivative lawsuits have been used to achieve ESG issues at numerous companies in the United States by investors worldwide. However, despite the widespread availability of derivative actions in Europe, very few cases have been filed to date.[47] As a result, the vast majority of European shareholder activist litigation continues to occur in the United States.

Examples include the 2005 shareholder derivative lawsuit against Viacom, Inc. brought by Swedish pension fund AP7 in New York Supreme Court alleging excessive compensation of certain Viacom executives.[48] The court held that AP7 adequately alleged breach of fiduciary duty and unjust enrichment claims against the defendants.

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[47] One explanation for the relative dearth of derivative actions may be the loser pays rules. For example, in a 1989 shareholder suit brought against Nestlé in Switzerland, a shareholders' association, which owned one share of stock, brought suit formally on behalf of itself, thus avoiding the lack of a class action device while sharing the costs of the litigation among the association's many members. *See* Samuel P. Baumgartner, *Class Actions and Group Litigation in Switzerland*, at 37 (2007) *available at* http://ssrn.com/abstract=932064.

[48] *In re Viacom, Inc. Shareholder Derivative Litig.*, Index No. 602527/05 (Supreme Court of New York).

In 2007, SEB Investment Management AB brought a shareholder derivative lawsuit against Mattel, Inc. in California district court asserting that Mattel's directors and management violated their fiduciary duties by failing to properly monitor the company's product safety practices and thereby allowing millions of toys tainted with lead paint to enter the consumer market, resulting in massive recalls and significant damage to the company.[49]

Also in 2007, The Service Employees International Union ("SEIU")[50] filed a shareholder derivative lawsuit against Chiquita alleging that its officers and directors were involved with illegal payments to paramilitary organizations in Colombia. SEIU's President, Andy Stern, explained that, "It is unacceptable for a corporation to turn a blind eye to widespread international labor and other human rights abuses in the name of serving shareholders well. A fundamental shift is needed in the way business is done; the end game cannot be turning the highest profit at any cost."[51]

SECURITIES FRAUD CLASS ACTION LAWSUITS

In the United States, the Securities Exchange Act of 1934 (the "Exchange Act") allows investors damaged by fraud at public companies to join together into a so-called "class" to pursue legal remedies. The class action device allows investors whose losses, standing alone, may not be large enough to justify litigation to pursue remedies against bad actors in the financial system.

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[49] *See* Mattel, Inc., Annual Report on Form 10-K, at 45 (26 February 2008).

[50] The SEIU is the largest and fastest growing union in North America, with over 2 million members across three service industry "divisions": Health Care, Public Services and Property Services. *See* http://www.seiu.org/a/ourunion/fast-facts.php

[51] SEIU Press Release, *SEIU Files Shareholder Derivative Lawsuit Against Chiquita, Calls for Fundamental Shift in 'Profit at Any Costs' Business Model* (13 December 2007).

Foreign investors, and particularly European institutional investors, have increasingly sought to serve as lead plaintiffs[52] in United States securities class action litigation. These investors have realized that participating in securities litigation can be beneficial to them from both a financial and corporate governance standpoint.

Generally, there is no prohibition against foreign investors participating in securities class actions against United States-based companies whose shares trade and were purchased on a United States securities exchange. Similarly, there is no prohibition against participating in securities class actions against foreign companies where the foreign institutional investor purchased ADRs or ADSs trading in the United States. Despite sound arguments supporting their inclusion, there have been some court decisions not allowing foreign institutional investors to participate in securities class actions against foreign companies whose shares were purchased on foreign exchanges.[53]

The determination of whether foreign investors who purchased shares on foreign exchanges can participate in a securities class action, whether in a leadership role as lead plaintiff, or simply as part of the class, is typically determined by the United States court's application of the "conduct test" and the "effects test."[54] The conduct test examines whether the fraudulent conduct forming the alleged United States securities law violation occurred in the United States.[55] Where foreign defendants undertake significant steps in the United States in

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[52] The Private Securities Litigation Reform Act of 1995 ("PSLRA") instituted a lead plaintiff selection process whereby there is a rebuttable presumption that the plaintiff with the largest financial interest in the litigation is the presumptive lead plaintiff, thereby encouraging large institutional investors to serve as lead plaintiff. Between 1996 and 2007, 234 foreign institutional investors sought to serve as lead plaintiff in United States securities fraud class actions.

[53] Foreign investors purchasing shares of foreign companies on foreign exchanges are typically referred to as "foreign-cubed" or "f-cubed" investors.

[54] *See Morrison v. National Australia Bank Ltd.*, 547 F.3d 167, 171-72 (2d Cir. 2008).

[55] *See Id.*

furtherance of a fraudulent scheme, a court can exercise jurisdiction over claims arising from that conduct even if the final transaction occurs overseas and only involves foreign investors.[56] The conduct test recognizes the principle that the United States does not want to be used as the base for manufacturing fraudulent securities devices for export.[57] The effects test determines whether jurisdiction exists based on the effects of the alleged fraudulent conduct in the United States, on United States investors and security markets, regardless of where the fraudulent conduct actually takes place.[58]

Even in the f-cubed situation, if a court determines that a foreign institutional investor may not participate in the class action that investor is not precluded from pursuing remedies in United States courts. For example, in the *Vivendi* litigation the securities class action excluded most f-cubed investors from the class.[59] As a result, numerous large foreign institutional investors that purchased Vivendi shares on foreign exchanges filed individual actions in the United States courts alleging substantially the same misconduct as the securities class action litigation.

Developments in Foreign Securities Litigation

At present, there is no country with a securities fraud class action system like that of the United States. However, in recent years a number of European countries have adopted some form of shareholder class action, including Denmark, Germany, Italy, the Netherlands, Norway, Sweden, Spain and the United Kingdom. Additionally, France has pending legislation that will allow a form of securities class action.

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56 *Id.* at 171-72.

57 *Id.* at 173.

58 *Id.* at 171.

59 *See In re Vivendi Universal, S.A. Sec. Litig.*, 2007 WL 1490466, at *18 (S.D.N.Y. May 21, 2007).

While the specific legislation varies greatly by country, perhaps the primary difference between these jurisdictions and the United States is the adoption of a so-called "opt-in" model. In the United States, securities class actions operate under the "opt-out" model whereby an investor is a member of the class unless he or she affirmatively chooses to "opt-out." In most European jurisdictions allowing some form of securities class action investors must affirmatively "opt-in" to be a part of any litigation, with the Netherlands being one notable exception to the "opt-in" system.

Further, unlike the United States, virtually all of these jurisdictions use some form of the loser pays rule to determine who must pay legal fees, which sometimes makes it difficult for plaintiffs to raise sufficient capital to pursue litigation given that they may be required to pay defendants' legal fees in the event of an unsuccessful lawsuit. Similarly, the Netherlands and Germany do not allow any form of contingency fee agreements while the United Kingdom allows no win-no pay fee arrangements that are not tied to the size of the eventual recovery.

Like derivative lawsuits discussed above, the class action device has been rarely, if at all, used in most of the countries that now allow some type of collective shareholder action. One of the only European settlements to date, and certainly the largest, occurred in the Royal Dutch Shell litigation. Royal Dutch Shell shareholders used a Netherlands law, passed in 2005 and allowing for litigation settlements similar to those in the United States, to settle a securities lawsuit initially filed in the United States as to European investors for nearly USD 500 million. Because European Union law requires courts to recognize judgments issued by other European Union states the judgment is likely to be enforceable across the European Union.

CONCLUSION

Article 2 of the UNPRI provides that signatories should "be active owners and incorporate ESG issues into [their] ownership policies and practices." In recent years, many institutional investors, particularly European investors, have been increasingly vocal in exercising their rights as shareholders by voting their shares at annual general meetings and submitting shareholder resolutions seeking ESG-related change at the companies in which they invest.

European institutional investors have also sought corporate governance change through derivative and securities lawsuits in the United States. However, despite the provision for derivative lawsuits in most European countries and the recent addition of group litigation remedies in some countries, derivative actions have not been widely pursued outside of the United States. The reasons are numerous and include the widespread loser-pays rules, the lack of a contingent fee system, and the large percentage share ownership requirements in numerous countries.

European institutional investors who are serious about ESG issues and socially responsible investing will continue to seek new ways to ensure that Europe's progressive shareholder protections are used to ensure appropriate corporate governance and to further ESG goals. Additionally, European institutional investors can continue to seek change by utilizing the well-developed derivative and securities laws available in the United States.

APPENDIX

OVERVIEW OF SELECTED EUROPEAN AND UNITED STATES CORPORATE LAW

Detailed below are the specific sources of corporate law for a selection of European Union countries including Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden and the United Kingdom, and non-European Union countries Switzerland and the United States.

The majority of country-specific corporate laws discussed herein allow proxy voting, shareholder resolutions, and some form of derivative lawsuit to allow shareholders to seek change at publicly-traded companies. In many cases, the legal protections afforded to public-company shareholders are stronger in Europe than in the United States. For example, under the recent United Kingdom Companies Act, discussed below, director duties have been expanded to include so-called enlightened shareholder provisions which now require directors to consider, among other things, their employees' interests, the long-term effect of business decisions, the impact of their business on the environment, and the need to maintain the company's reputation for high standards of conduct.[60]

Despite the United Kingdom's stronger legal protections, private enforcement of corporate law through the derivative action, which is common in the United States, is rare in the United Kingdom. Conversely, the intensity of private enforcement in the United States compensates for corporate laws that are comparatively weaker in the United States than those in the United Kingdom, and the European Union generally. This vital difference also helps to explain the cross-listing premium that continues to persist for European Union-based companies

[60] *See* United Kingdom Companies Act 2006, § 172.

that choose to list their shares on a United States stock exchange.[61] European Union companies that choose to cross-list in the United Kingdom do not enjoy a similar cross-listing premium.[62]

Belgium

Belgium public companies are governed primarily by the Belgian Company Code ("BCC") which includes basic corporate governance principles such as a director's standard of care, rules on conflicts of interest, and the one share, one vote principle.[63] The BCC further incorporated corporate governance rules by the Law of 2 August 2002, commonly known as the Corporate Governance Law, which modified the BCC to include provisions concerning independent directors, management and other advisory committees, and independence requirements for company auditors.[64] Finally, Belgium published a code of best corporate governance practices, known as the Code Lippens, on 9 December 2004.[65] The Code Lippens is not mandatory and is based on a comply or explain system which allows companies to deviate from code provisions provided they justify their reasons for doing so.[66]

Enforcement of the legal provisions of the Belgian corporate governance rules is vested with the Belgian courts and compliance with the Code Lippens is monitored by individual company's boards and shareholders along with the Banking, Finance and Insurance Commission ("BFIC") which also plays a general supervisory role regarding Belgium's public companies.[67]

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61 *See* John C. Coffee, *Law and the Market: The Impact of Enforcement*, 156 U. Pa. L. Rev. 229, at *290 (2007) (foreign firms listed in the United States enjoy a significant cross-listing premium).

62 *Id.*

63 *See* Ira Millstein & Holly Gregory, *Corporate Governance 2008, Getting the Deal Through*, pg. 31, Law Business Research Ltd. (2008) (*hereinafter* "Corporate Governance 2008").

64 *Id.*

65 *Id.*

66 *Id.*

67 *Id.*

Legal enforcement actions may be brought by both Belgian companies and their shareholders. Claims may be asserted against directors based on violations of the BCC or the company's articles of incorporation, conflicts of interest, and misappropriated assets.[68]

France

French public companies are governed primarily by the French Commercial Code and the French Monetary and Financial Code with further securities rules set out by the General Regulation of the French Stock Exchange Authority which sets out various binding corporate governance and reporting requirements.[69]

While France does not have a specific governmental agency responsible for corporate governance, both shareholders and the company may bring legal actions to compensate damages suffered by a French company.[70] Additionally, the French Commercial Code provides for the criminal liability of directors including fines and imprisonment for serious violations.[71]

Germany

German companies are governed primarily by the German Stock Corporation Act which contains detailed rules for the governance of public companies.[72] Additionally, Germany has a Corporate Governance Code which defines corporate best practices, including recommendations concerning transparent reporting and auditor independence.[73] While the Corporate Governance

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68 *Id.* at 34.

69 *Id.* at 86.

70 *Id.* at 89.

71 *Id.*

72 *Id.* at 93.

73 *Id.*

Code is not mandatory, companies choosing not to abide by a provision must publicly state their reasons for not doing so.[74]

While the Federal Financial Supervisory Authority has certain limited enforcement powers related to disclosure obligations, Germany does not have a government agency charged with enforcing corporate governance rules.[75] The mandatory corporate governance rules are intended to be enforced through private litigation in German courts.[76]

Shareholders may require that a claim against company directors be invoked through a shareholder resolution and appoint a special representative at the general meeting.[77] In addition, shareholders may bring a derivative action on behalf of the company in German court.[78] However, to avoid frivolous litigation, such litigation is subject to numerous procedural requirements before it may proceed.[79]

Italy

Italian companies are governed by the Civil Code and Legislative Decree 58/1998 for publicly traded companies.[80] Italy also has a voluntary code of conduct, the Codice Preda, for publicly traded companies which was enacted in 2002 and revised in 2006.[81]

Italian companies are also regulated by the Commissione Nazionale per le Società e la Borsa, or CONSOB, the Italian Stock Exchange (Borsa Italiana SpA) and the Bank of Italy.[82]

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74 *Id.*

75 *Id.*

76 *Id.*

77 *Id.*

78 *Id.*

79 *Id.*

80 *Id.* at 132.

81 *Id.*

82 *Id.*

Further, enforcement actions can be brought against directors on behalf of the company for breach of their duties.[83]

Luxembourg

Companies in Luxembourg are governed by the Law of 10 August 1915 on Commercial Companies (the Companies' Act) and publicly traded companies are also governed by the rules and regulations of the Luxembourg Stock Exchange ("LSE"), as adopted by the Conseil d'Administration de la Société de la Bourse de Luxembourg and approved on 1 November 2007. Further the LSE published guidelines for corporate governance best practices on 1 January 2007 for all companies listed on the LSE.

The LSE is the primary institution charged with enforcing the various company laws in conjunction with company shareholders.[84] Shareholders' primary recourse against company management and directors is voting at the general shareholder meeting.[85] Luxembourg corporate law does not allow traditional derivative lawsuits.[86] However, individual shareholders may bring a legal action where there has been a violation of Luxembourg company law or the company's articles of association if they have suffered damages separate and distinct from the damages suffered by the company.[87]

Netherlands

Dutch companies are primarily governed by Book 2 of the Dutch Civil Code ("DCC") and publicly traded companies are also governed by Dutch securities law and the Dutch Listing

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83 *Id.* at 135.

84 *Id.*

85 *Id.* at 160.

86 *Id.*

87 *Id.* at 160-61.

and Issuing Rules.[88] Further, on 9 December 2003, the Tabaksblat Committee issued the Dutch Corporate Governance Code which requires publicly traded companies to disclose in their annual reports the extent to which they have complied with the Code and to explain any noncompliance. Further, the Dutch Corporate Governance Code Monitoring Committee monitors the operation and implementation of the Code by publicly traded companies and their shareholders.[89]

In addition to the Corporate Governance Code Monitoring Committee, the Dutch district courts, and the Enterprise Division of the Court of Appeals in Amsterdam may institute inquiries into company conduct upon the petition of shareholders.[90] The Enterprise Division may appoint experts with broad powers to carry out the inquiry and if misconduct is found the Enterprise Division has broad powers to take action to protect shareholders.[91] Shareholders do not have a direct right to claim damages against directors and management unless they have manifestly acted against shareholder interest.[92] However, the management board, on behalf of the company, may bring an action against directors for improper management. Proceedings under this feature of Dutch law are exceedingly rare.[93]

Spain

Spanish companies are governed by the Spanish Commercial Code and the 2006 Unified Good Governance Code, which provides aspirational good corporate governance

88 *Id.* at 180.

89 *Id.*

90 *Id.* at 180-81.

91 *Id.*

92 *Id.* at 184.

93 *Id.*

recommendations which companies must either apply or explain their reasons for not doing so.[94] Spanish law allows for derivative lawsuits against directors and managers.

Sweden

Swedish corporate governance requirements are set out in the Swedish Companies Act, stock exchange listing requirements and statements issued by the Swedish Securities Council.[95] The Code of Corporate Governance provides additional suggested corporate governance guidelines under the comply or explain system whereby companies can choose not to follow certain rules, but must explain to shareholders their reasons for doing so.[96] The Swedish Companies Act allows for derivative lawsuits against company directors and management.

Switzerland

Article 620ss of the Swiss Federal Code of Obligations, CO and the Federal Stock Exchange and Securities Trading Act are the primary laws governing Swiss public companies.[97] Additionally, the Swiss Stock Exchange ("SWX") mandates listing rules for publicly traded companies and, in 2002, enacted the SWX Corporate Governance Directive requiring increased disclosure of management control mechanisms and, in 2005, the SWX Directive on Disclosure of Management Transactions.[98] Switzerland also has a Code of Best Practice which sets non-binding corporate governance standards for Swiss companies.[99]

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94 *See* Isabel Gutiérrez, *Corporate Governance in Spain, available at* http://www.disas.unisi.it/jmg/round/CorporateGovernanceSpain.pdf

95 The Swedish Corporate Governance Board, *The Swedish Code of Corporate Governance*, at 7 (1 July 2008)

96 *Id.*

97 Corporate Governance 2008, at 216.

98 *Id.*

99 *Id.*

The primary regulators in Switzerland are the Swiss Federal Banking Commission ("FBC") and the Swiss Takeover Board. The SWX enforces its Listing Rules, which are subject to the approval of the FBC.[100] Further, corporate liability actions may be brought by the company or its shareholders and may take the form of a derivative action on behalf of the company or a direct action for damages.[101]

United Kingdom

Corporations in the United Kingdom are primarily governed by the Companies Act 2006 ("CA 2006") which received royal assent on 8 November 2006 and will be fully in force by October 2009.[102] Further, the United Kingdom has a Combined Code on Corporate Governance ("Combined Code") published and administered by the Financial Reporting Council ("FRC"), which also serves as the primary regulator for corporate reporting and governance.[103] Adherence to the Combined Code is not mandatory but is considered best practice for publicly traded companies.[104] The overall objective of the Combined Code is to enhance board effectiveness and raise the standards of corporate governance.[105]

Part 11 of CA 2006 provides a new statutory basis on which shareholders may bring a derivative claim against directors for any actual or proposed action or omission involving negligence, default, or breach of the duty of trust by a director.[106]

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100 *Id.*

101 *Id.* at 218.

102 *Id.* at 236.

103 *Id.* at 236-37.

104 *Id.* at 236.

105 *Id.*

106 *Id.* at 241.

United States

Corporate law in the United States varies by state but is primarily a function of the Delaware General Corporation Law because the majority of publicly traded corporations are incorporated in Delaware. Publicly traded companies in the United States are also governed by federal securities law, discussed further below, and additional corporate governance requirements are provided by the major stock exchanges, the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX") and the National Association of Securities Dealers Automated Quotation ("NASDAQ").

The primary enforcement mechanism for state corporate law is the derivative lawsuit initiated by shareholders. In addition, the Securities and Exchange Commission ("SEC") and the Department of Justice ("DOJ") have the power to enforce federal securities law, discussed in more detail below.

UNPRI Signatories

The following investment managers and asset owners have committed to applying the UNPRI Principles, including Principle 2:

Asset Owner Signatories

Accident Compensation Corporation (New Zealand)
Achmea (Netherlands)
AFL-CIO Reserve Fund (USA)
AFL-CIO Staff Retirement Plan (USA)
AP1 (Sweden)
AP2 (Sweden)
AP3 (Sweden)
AP4 (Sweden)
AP7 (Sweden)
APG (Netherlands)
ARIA (Australia)
Arkitekternes Pensionskasse (The Architects' Pension Fund) (Denmark)
ARUS (Brazil)
ASB Community Trust (New Zealand)
ATP - The Danish Labour Market Supplementary Pension (Denmark)
Australian Capital Territory (Australia)
AustralianSuper (Australia)
Banesprev (Brazil)
BBC Pension Trust Limited (United Kingdom)
BBVA Fondo de Empleo (Spain)
BP Pension Fund (UK)
Bpf AVH (Netherlands)
British Columbia Municipal Pension Plan (Canada)
BT Pension Scheme (UK)
Caisse de dépôt et placement du Québec (Canada)
Caisse des dépôts et consignations – CDC (France)
CalPERS (USA)
CalSTRS (USA)
Canada Pension Plan Investment Board (Canada)
CARE Super (Australia)
Caser Pensiones Entidad Gestora de Pensiones, S.A. (Spain)
Catholic Superannuation Fund (Australia)
CBUS Superannuation Fund (Australia)
Celpos (Brazil)
CENTRUS- Fundação Banco Central de Previdência Privada (Brazil)
Ceres - Fundação de Seguridade Social (Brazil)
Christian Super (Australia)
Christopher Reynolds Foundation (USA)
Church of Sweden (Sweden)
CIA (Caisse de Prevoyance du Canton de Geneve) (Switzerland)
Comité syndical national de retraite Bâtirente (Canada)
CommInsure (Australia)
Community Trust of Southland (New Zealand)
Connecticut Retirement Plans and Trust Funds (CRPTF) (USA)
CSR Capital (Denmark)
Danish Pension Fund for Engineers (DIP) (Denmark)
DESBAN (Brazil)
Dexia Insurance Services (Belgium)
Earthquake Commission (New Zealand)
Economus (Brazil)
Environment Agency Pension Fund (UK)
ESSSuper (Australia)
Etablissement du Régime Additionnel de la Fonction Publique – ERAFP (France)
Ethias Assurance (Belgium)
FAELBA - Fundação COELBA de Previdência Complementar (Brazil)
FASERN (Brazil)
First State Superannuation Scheme (Australia)
Folksam (Sweden)
Fondation Guilé (Switzerland)
Fondo de Pensiones Cajasol Empleados (Spain)
Fonds de réserve pour les retraites – FRR (France)
Forluz (Brazil)
Fuji Pension Fund (Japan)
Funcef (Brazil)
Fundação 14 (Brazil)
Fundação BrTPREV (Brazil)
Futurcaval, F.P. (Spain)
General Board of Pension and Health Benefits United Methodist Church (USA)
Gestión de Previsión y Pensiones E.G.F.P (Spain)
Global Crop Diversity Trust (Italy)
Goldman Sachs JBWere Superannuation Fund (Australia)
Government Employees Pension Fund of South Africa (South Africa)
Government Pension Fund of Thailand (Thailand)
Government Superannuation Fund Authority (New Zealand)
Health Super (Australia)
HESTA Super Fund (Australia)
HYY Group (Finland)
IAG & NRMA Superannuation pty Limited (Australia)
Illinois State Board of Investments (USA)
Ilmarinen Mutual Pension Insurance Company (Finland)
Industriens Pensionsforsikring A/S (Denmark)

Infraprev (Brazil)
Insurance Australia Group (IAG) (Australia)
Jessie Smith Noyes Foundation (USA)
Kehati - The Indonesian Biodiversity Foundation (Indonesia)
KfW Bankengruppe (Germany)
Kikkoman Corporation Pension Scheme (Japan)
KLP (Norway)
LD Pensions (Denmark)
Lifeyrissjodur Verzlunarmanna (Pension Fund of Commerce) (Iceland)
Local Government Pensions Institution (Finland)
Local Government Superannuation Scheme (Australia)
Local Super (Australia)
London Borough of Haringey Pensions Committee (UK)
London Pensions Fund Authority (LPFA) (UK)
Los Angeles County Employees Retirement Association (LACERA) (USA)
Lothian Pension Fund (UK)
LSR (Iceland)
LUCRF Super (Australia)
MAIF (France)
Mennonite Mutual Aid (USA)
Merseyside Pension Fund (UK)
Midat Cyclops FP (Spain)
Middletown Works Hourly and Salaried Union Retirees Health Care Fund (USA)
Mistra (Sweden)
Mn Services N.V. (Netherlands)
Mode Interieur Tapijt & Textiel (MITT) (Netherlands)
MP Pension, Pensionskassen for Magistre og Psykologer (The Pension Fund for Danish M.A.'s, M.Sc.'s and Ph.D.'s) (Denmark)
Multi-Employer Property Trust (USA)
Munich Reinsurance AG (Germany)
Mutual Insurance Company Pension Fennia (Finland)
Nathan Cummings Foundation (USA)
National Pensions Reserve Fund of Ireland (Ireland)
New York City Employees Retirement System (USA)
New York State Teachers' Retirement System (NYSTRS) (USA)
New Zealand Fire Service Superannuation Scheme (New Zealand)
New Zealand Superannuation Fund (New Zealand)
NGS Super (Australia)
Northern Ireland Local Government Officers' Superannuation Committee (Northern Ireland / UK)
Norwegian Government Pension Fund - Global (Ministry of Finance Norway and Norges Bank Investment Management) (Norway)
Norwegian Government Pension Fund - Norway (Ministry of Finance Norway and Folketrygdfondet) (Norway)
Pen-Sam Liv forsikringsaktieselskab (Denmark)
Pensioenfonds Metaal en Techniek (Netherlands)
Pensioenfonds PNO Media (Netherlands)
Pensioenfonds Predikanten (Netherlands)
Pensioenfonds Vervoer (Netherlands)
Pension Fund of Zürcher Kantonalbank (Switzerland)
Pension Protection Fund (UK)
PensionDanmark (Denmark)
Pensionfund Metalektro (PME) (Netherlands)
Pensions Caixa 30 FP (Spain)
Pensionskassen for Jordbrugsakademikere og Dyrlaeger (The Pension Fund for Agricultural Academics and Veterinary Surgeions) (Denmark)
Petros (Brazil)
PFA Pension (Denmark)
PKA (Denmark)
Premium Pension Authority (Sweden)
PREVI (Brazil)
Public Service Alliance of Canada (PSAC) Pension Fund (Canada)
Sameinadi lifeyrissjodurinn (United Pension Fund) (Iceland)
SAMPENSION (Denmark)
SEIU Pension Plans Master Trust (USA)
SISTEL (Brazil)
Société d'assurance-vie inc. (SSQ) (Canada)
SPOV (Netherlands)
Standard Life (UK)
State Retirement and Pension System of Maryland (USA)
State Universities Retirement System of Illinois (USA)
State Wide Superannuation Trust (Australia)
Stichting Ondernemingspensioenfonds Mn Services (Opf) (Netherlands)
Stichting Pensioenfonds Zorg en Welzijn (formerly PGGM) (Netherlands)
Stichting Shell Pensioenfonds (Netherlands)
Stichting Spoorwegpensioenfonds (Netherlands)
Storebrand (Norway)
Strathclyde Pension Fund (UK)
Swiss Reinsurance Company (Switzerland)
Taiyo Life Insurance Company (Japan)
Tapiola Mutual Pension Insurance Company (Finland)
Tasplan (Australia)
Teachers' Retirement System of the City of New York (USA)
Telstra Super Pty Ltd (Australia)
The Canterbury Community Trust (New Zealand)
The Central Church Fund of Finland (Finland)
The Co-operative Asset Management (UK)
Tradeka Corporation (Finland)

Trust Waikato (New Zealand)
TWUSUPER (Australia)
UniSuper Management Pty Limited (Australia)
United Church Foundation (USA)
United Nations Joint Staff Pension Fund (International)
Universities Superannuation Scheme – USS (UK)
Vaekstfonden (Denmark)
Valia (Brazil)
VicSuper (Australia)
Victorian Funds Management Corporation (Australia)
Vision Super (Australia)
Vital Forsikring ASA (Sweden)
Zurich Financial Services Australia Ltd (Australia)

Investment manager signatories

27Four Investment Managers (South Africa)
Aberdeen Asset Management (UK)
ABN AMRO Asset Management (Netherlands)
Abraaj Capital (UAE)
Access Capital Partners (France)
Actis (UK)
ADM Capital (Hong Kong)
Advanced Investment Partners (US)
Advantage Asset Managers (Pty) Limited (South Africa)
AEGON Asset Management (UK)
Alcyone Finance (France)
Allianz Global Investors France (France)
Allianz Global Investors Korea Limited (South Korea)
AlphaFixe Capital Inc. (Canada)
Amalgamated Bank (USA)
AMP Capital Investors (Australia)
Anacacia Capital (Australia)
Apostle Asset Management (Australia)
Ark Investment Advisors Inc. (South Korea)
ArkX Pty Ltd (Australia)
Astra Investimentos (Brazil)
Atom Funds Management Pty Ltd (Australia)
Australian Ethical Investment Ltd. (Australia)
Aviva Investors (UK)
AXA Investment Managers (France)
Axiom Properties Limited (Australia)
Baillie Gifford (UK)
Bakers Alternative Energy Ltd (Australia)
Baltcap (Estonia, Latvia and Lithuania)
Banco (Sweden)
Banco Real Asset Management (Brazil)
Bank Sarasin & Co. Ltd (Switzerland)
BankInvest (Denmark)
BC Investment Management Corporation (Canada)
BC Partners (UK)
Bennelong Funds Management Limited (Australia)
BlackRock (USA)
Blue Marble Capital Management Limited (Canada)
Blue Wolf Capital Management (USA)
BlueOrchard (Switzerland)
BNG Capital Management (Netherlands)
BNP Paribas Asset Management (France)
Boston Common Asset Management (USA)
Boston Trust (USA)
BT Financial Group (Australia)
Cadiz Holdings (South Africa)
Calvert Group (USA)
Capital Dynamics (Switzerland)
Capital Innovations (USA)
Capricorn Investment Group, LLC (USA)
Carlson Investment Management (Sweden/Luxembourg)
Carnbrea & Co Limited (Australia)
Carthona Agriculture (Australia)
Cazenove Capital Management (UK)
CCLA (UK)
Central Finance Board of the Methodist Church (UK)
Challenger Managed Investments Limited (Australia)
Charter Hall Group (Australia)
Cinven (UK)
ClearBridge Advisors (USA)
Colonial First State Global Asset Management (Australia)
Community Capital Management, Inc (USA)
Cordares (Netherlands)
Cordiant (Canada)
Coronation Fund Managers (South Africa)
Corston-Smith Asset Management (Malaysia)
Crédit Agricole Asset Management Group (France)
Cyrte Investments (Netherlands)
Daiwa Asset Management Co. Ltd (Japan)
de Pury Pictet Turrettini & Cie (Switzerland)
Deutsche Asset Management (Germany)
Dexia Asset Management (Belgium)
DnB NOR Asset Management AB (Norway/Sweden)
DNZ Property Group Limited (New Zealand)
Domini Social Investments (USA)
Doughty Hanson & Co (UK)
Dr. Höller Vermögensverwaltung und Anlageberatung AG (Switzerland)
Drapac (Australia)
EG Funds Management (Australia)
Epworth Investment Management (UK)
Ethical Funds Company, The (Canada)
Ethos Foundation (Switzerland)
Etica SGR (Italy)
Eureka Funds Management (Australia)
F&C Asset Management (UK)

Federal Finance (France)
Financière de Champlain (France)
Financière de l'Echiquier (France)
First Affirmative Financial Network, LLC (USA)
Five Oceans Asset Management (Australia)
Foresters Community Finance Ltd (Australia)
Forma Futura Invest AG (Switzerland)
Fortis Investments (Belgium)
Frater Asset Management (South Africa)
Futuregrowth Asset Management (South Africa)
Fédéris Gestion d'Actifs (France)
Generation Investment Management LLP (UK)
Genesis Fund Managers (UK)
Gimar Capital Investissement (France)
Global Currents Investment Management, LLC (USA)
Goldman Sachs JBWere Asset Management (Australia, New Zealand)
Governance for Owners (UK)
Green Century Capital Management (USA)
Greencape Capital (Australia)
Groupama Asset Management (France)
Growthworks Capital (Canada)
Hamilton Lane (USA)
Harcourt Investment Consulting (Switzerland)
Henderson Global Investors (UK)
Hermes Pensions Management (UK)
Herschel Asset Management (Australia)
Highland Good Steward Management (USA)
HSBC Group Investment Businesses Limited (UK)
Huljich Wealth Management (New Zealand)
Hyperion Asset Management Limited (Australia)
ICE Canyon LLC (USA)
Impax Asset Management (UK)
Industry Funds Management (Australia)
ING Investment Management (Netherlands)
Inhance Investment Management Inc. (Canada)
Insight Investment (UK)
Investa Property Group (Australia)
Investec (South Africa)
Investment Solutions (South Africa)
Investors Mutual Limited (IML) (Australian)
JF Capital Partners Ltd (Australia)
JPMorgan Asset Management (USA)
Jupiter Asset Management (UK)
Kagiso Asset Management (South Africa)
KBC Asset Management (Belgium)
Kempen Capital Management NV (Netherlands)
Kennedy Associates Real Estate Counsel, LP (USA)
Kohlberg Kravis Roberts & Co, LLP (USA)
Krull & Company (USA)
La Banque Postale Asset Management (LBPAM) (France)
Legae Capital (South Africa)
Lend Lease Investment Management (Australia)
LGT Capital Partners (Switzerland)
Light Green Advisors (USA)
Limestone Investment Management (Estonia)
Living Planet Fund Company (Luxembourg)
Lloyd George Management (UK)
Lombard Odier Darier Hentsch & Cie (Switzerland)
Loring, Wolcott & Coolidge Office (USA)
Lundmark & Co Fondförvaltning AB (Sweden)
Macif Gestion (France)
Maple-Brown Abbott Limited (Australia)
Marc J Lane Investment Management Inc. (USA)
Mauá Investimentos Ltda (Brazil)
Mazi Visio Manco Pty Ltd (South Africa)
Mergence Africa Investments (South Africa)
Meritas Financial Inc. (Canada)
Meta Asset Management (Sweden)
METROPOLE Gestion (France)
Miller Howard Investments (USA)
Minlam Asset Management LLC (USA)
Mirae Asset Investment Management Co., Ltd (South Korea)
Mitsubishi UFJ Trust and Banking Corporation (Japan)
Mitsui Asset Trust and Banking Co., Ltd. (MATB) (Japan)
Mizuho Trust & Banking Co., Ltd (Japan)
Montanaro (UK)
Munros Capital Management LLP (UK)
Natcan Investment Management (Canada)
Natixis Asset Management (France)
Natural Investments LLC (USA)
Nevastar Finance (UK)
New Amsterdam Partners (USA)
Newton Investment Management (UK)
Nikko Asset Management Co. Ltd. (Japan)
Nissay Asset Management Corporation (Japan)
Nonghyup CA Asset Management Co. (South Korea)
Nordea (Nordea Fonder AB, Sweden; Nordea Investment Management AB, Sweden; Nordea Investment Funds Finland; Nordea Fondene Norge AS, Norway, Nordea Invest, Denmark) (Sweden, Finland, Norway, Denmark)
Northward Capital (Australia)
NSG Capital (Brazil)
Nykredit Realkredit Group (Denmark)
Oasis Group Holdings (South Africa)
OFI Asset Management (France)
Pantheon Ventures Limited (UK)
Parnassus Investments (USA)
Partners Group (Switzerland)
Pax World (USA)
PCG Asset Management (USA)
Perennial Investment Partners Limited (Australia)
PGGM Investments (Netherlands)
PHITRUST Active Investors (France)
Pictet Asset Management (Switzerland)
Pioneer Investments (Italy)

Prescient Investment Management (South Africa)
Prime Energy Development (Thailand)
Principle Capital Partners Limited (Switzerland)
Progressive Asset Management (USA)
Prudential Portfolio Managers (South Africa)
QIC (Australia)
Rapaki Property Group (New Zealand)
RCM (UK) Ltd (UK)
Resona Bank Limited (Japan)
responsAbility Social Investments AG (Switzerland)
Robeco (Netherlands)
Royal London Asset Management (UK)
Ryan Labs Asset Management (USA)
Sal. Oppenheim (Luxemburg)
SAM Sustainable Asset Management AG (Switzerland)
Sanlam Investment Management (SIM) (South Africa)
Santa Fé Portfolios Ltda (Brazil)
Satori Capital, L.L.C. (USA)
Schroders (United Kingdom)
Scipion Capital Limited (Switzerland)
Scottish Widows Investment Management (UK)
SH Asset Management Co. (South Korea)
Skandinaviska Enskilda Banken (SEB) AB (Sweden)
Smith Pierce (USA)
SNS Asset Management (Netherlands)
Société Générale Asset Management (France)
Socrates Fund Management Ltd (New Zealand)
Sompo (Japan)
Souls Funds Management Limited (Australia)
SPF Beheer (Netherlands)
STANLIB Asset Management (South Africa)
Stockland (Australia)
Stratus (Brazil)
Sumitomo Trust (Japan)
Sutterlüty Investment Management GmbH (Austria)
Swedbank Robur (Sweden)
Syntrus Achmea Asset Management (Netherlands)
Systematic Absolute Return AP (SAR) (Switzerland)
TD Asset Management Inc., TDAM USA Inc. (Canada, USA)
The GPT Group (Australia)
Threadneedle Asset Management Ltd (United Kingdom)
TIAA – CREF (USA)
Tower Capital Asset Management, LP (USA)
TOWER Investments (New Zealand)
Trillium Asset Management (USA)
Trinity Holdings (South Africa)
Triodos Investment Management B.V. (Netherlands)
TRIPOD Investments Gestão de Investimentos (Brazil)
Tyndall Investment Management Limited (Australia)
UBS Global Asset Management (UK)
UCA Funds Management (Australia)
Unibanco Asset Management (Brazil))
University of Dayton Davis Center for Portfolio Management's Flyer Investments (USA)
VBV- Vorsorgekasse AG (Austria)
Vector Casa de Bolsa (Mexico)
Weedflower, Inc. (USA)
Westmount Pacific LLC (Thailand)
Winslow Management Company (USA)
Zegora Investment Management Ltd. (Switzerland)