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EDITORIAL

Il y a 20 ans l'ICGN était créé, que de progrès !

Sommaire

Qui fait quoi ?

- ***Yves Perrier*, Directeur Général d'*Amundi* élu président de l'AFG**

En cette période d'incertitude, il est utile de revenir sur le passé pour comprendre le présent et anticiper l'avenir. En effet le "retour de l'histoire" et la force de la logique historique sont des facteurs qui façonnent l'existence des peuples et déterminent la durée de vie des nations comme celle des empires. En 2015, nous sommes à un tournant décisif dans la mutation des États et des entreprises.

La courbe de vie des États et des empires économiques-financiers sera fortement influencée par le retour à un monde multipolaire d'une manière pacifique ou bien guerrière. La IIIème guerre mondiale par procuration ou par confrontation directe est en cours, sinon très probable à court terme.

Par contre, la globalisation des entreprises progresse et même s'accélère. Pour une entreprise cette opération de globalisation nécessite au préalable l'adoption de nouveaux comportements, de nouvelles règles de conduite, une nouvelle organisation, qui sont prescrits par les principes de gouvernement d'entreprise, d'éthique et de responsabilité sociale de l'entreprise. Ces principes sont enrichis en permanence par les travaux des équipes d'experts des investisseurs institutionnels regroupés dans *l'International Corporate Governance Network* (ICGN,) réseau représentant 26 000 G$ d'actifs sous gestion. Actuellement ces investisseurs institutionnels sont devenus les actionnaires de référence des sociétés cotées du monde entier. Leur influence est incontournable, parce que leur périmètre est mondial et qu'ils accompagnent le développement global des entreprises dans lesquelles ils ont investi avec un horizon de long terme (LT). Les entreprises et les investisseurs sont liés par le même horizon global et de LT. Les régulateurs des marchés et les superviseurs des institutions financières ne font que traduire cet état de fait, car ils sont aussi des parties prenantes de l'entreprise.

Depuis la création il y a 20 ans de l'ICGN, auquel cette lettre 42 est en partie consacrée, que de progrès !

Nous nous souvenons très bien des déclarations de notre ami Bill Crist, président de Calpers (140G$ à l'époque), qui, au début des années 80, recommandait aux entreprises d'améliorer leur rentabilité (un retour pour l'actionnaire de 8%), la création dans les Conseils d'administration (CA) ou de surveillance (CS) de 2 ou 3 comités spécialisés pour mieux préparer les décisions du CA/CS composés de "quelques" administrateurs indépendants . La presse et les analystes financiers, soutenus par les entreprises et les organisations patronales ont crié à "la dictature des fonds de pension", ces "Veuves Écossaises assoiffées de sang". Histoire vraie !

Les premiers *corporate governance guidelines* de TIAA-CREF, de CALPERS, les codes Cadbury, Hampel, Myners, les codes Vienot 1 et 2 étaient proposés aux entreprises sous formes de recommandations et non pas d'obligations. Mais le dialogue était inexistant. Les AG des grands groupes français étaient du spectacle "bon enfant", des " faire valoir " des dirigeants issus des ministères et solidaires pour ne pas changer l'ordre établi sous la tutelle de l'État actionnaire et de la *golden share*. En Amérique du Nord, au Royaume Uni et dans la plupart des pays Européens, les CA/CS étaient composés d'*executives directors* ; il n'y avait pas de comités spécialisés, la fixation des rémunérations des dirigeant se faisait "entre amis", le choix des administrateurs s'effectuait par cooptation de personnalités issues de la Haute Administration (en France le Corps des Mines, l'Inspection des Finances ou l'ENA). Il était difficile pour un actionnaire étranger d'exercer ses droits de vote, de poser une question écrite ou orale, encore plus difficile de déposer un projet de résolution. Découragés par tant d'obstacles, les fonds de pension et les autres investisseurs étrangers "votaient avec leurs pieds". Après dix ans, les premiers résultats portaient leurs fruits : l'OCDE et la Banque Mondiale validaient ces principes de gouvernement d'entreprise et en recommandaient fortement la mise en œuvre. Les CA/CS se dotaient de comités spécialisés (d'audit, des rémunérations et des nominations). Les investisseurs institutionnels exerçaient de plus en plus leurs droits de vote. Après la crise financière issue de la titrisation des crédits immobiliers américains et européens insolvables via les CDO, après quelques faillites retentissantes (ENRON, Parmalate, AIG, Lehman Brothers, WaMu, Northern Rock, Dexia, Fortis notamment), les actionnaires ont décidé de passer à l'action, d'exercer tous leurs droits, suivis des parties prenantes conscientes de la nécessité d'adopter une attitude pro active. Depuis 5 ans, un dialogue de plus en plus étroit s'est établi entre les émetteurs et les investisseurs, au-delà des traditionnels *road show*, pour mesurer les effets de la RSE et les orientations de l'ISR, les pratiques ESG, afin de fidéliser l'actionnariat de référence et de restaurer la confiance. Aujourd'hui, 20 ans après, le poids des membres de l'ICGN s'est accru ; ces investisseurs institutionnels, les fonds souverains comme Norges Bank IM, QIA, ADIA, CIC, les Mutual Funds comme BlackRock, Fidelity, dont les actifs sous gestion se mesurent en trillions de $, deviennent des actionnaires prépondérants de toutes les sociétés cotées. Les "batailles" actuelles portent sur l'application des principes "*one share one vote*", "*say on pay*", "*comply or explain*", *transparency, independent director, diversity, "long term social responsible investment", climate change, "SOX and internal control report", risk management* ... notamment.

Les investisseurs institutionnels ont réalisé qu'ils avaient un devoir de vigilance vis-à-vis des épargnants, des retraités et des assurés qui leur ont confié leurs économies. Pour s'y conformer et exercer efficacement leur contrôle permanent de l'activité des entreprises dans lesquelles ils ont investi, les investisseurs institutionnels ont constitué des équipes dédiées. Ces équipes surveillent en permanence la mise en œuvre par les émetteurs de la gouvernance, de la RSE, des principes éthiques, de la prévention des risques et des conflits d'intérêts. Les investisseurs et les gestionnaires d'actifs sont obligés à leur tour de rendre compte à leurs dépositaires de l'usage des fonds et des droits qui leur ont été confiés. S'ils détectent chez un émetteur une opération frauduleuse, un abus de bien social, une grave faute de gestion de la part d'un dirigeant ou mandataire social, ils exercent leur devoir d'alerte, le *whistleblowing*, à l'égard de la communauté des actionnaires.

Le dialogue entre émetteurs et investisseurs est devenu régulier et constructif ; les AG ont retrouvé leur légitimité et leur souveraineté ; la démocratie actionnariale a progressé et la confiance semble restaurée.

Jean-Aymon MASSIE

POINT DE VUE INVESTISSEUR

ICGN Annual Conference Program: 3-5 June 2015

Day one: ICGN Annual Conference- progress to date

ICGN Work Programme (Policy Committee Meetings)
Annual General Meeting
Opening remarks from Erik Breen, ICGN Chairman
Welcome Address: Alderman Alan Yarrow, Rt Hon The Lord Mayor, City of London
Pioneer Remarks: Sir Adrian Cadbury and Ira Milstein
Global governance reform: progression or regression?
ICGN Award introduced by Peter Butler, GO Investment Partners
ICGN Scholarship Awards introduced by Philip Armstrong and presented by Jennifer Walmsley of Hermes
ICGN Welcome Reception opened by Mark Boleat, Chairman of the Policy and Resources Committee, City of London

Day Two: ICGN Annual Conference – state of play

Welcome from Kerrie Waring, Managing Director, ICGN
Plenary 1: Financial market regulation: time for a holistic review?
Plenary 2: Inside the boardroom black-box
Plenary 3: The changing face of ownership in a new world order
ICGN Workshops: driving practical action
1: Challenges and opportunities in emerging market controlled company investments
2: How will ISA, the new audit report standard in the UK, impact auditors, audit commitees, investors and other stakeholders?
3: Human rights: what should investors be expected to know and do?
4: How do we know if companies are cyber-resilient or cyber-fragile … and why should we care?
5: Driving accountability across the voting chain
ICGN 20th Anniversary Gala Dinner in the Great Hall followed by a Jazz Party in the medieval Crypts

Day Three: ICGN Annual Conference – new agenda

Welcome by Kerrie Waring, Managing Director, ICGN
Plenary 4: Global capital market reform: pipe dream or achievable reality?
Plenary 5: The board of the future: will it be fit for purpose?
Plenary 6: Share ownership in a global context – is stewardship working
Closing remarks and thanks to the City of London from Erik Breen, ICGN Chairman

Pour accéder à la totalité du programme, aux biographies des orateurs et adhérer, veuillez consulter le site: www.icgn.org

POINT DE VUE INVESTISSEUR

"THE END OF THE BEGINNING"

My Friends,

A little over 70 years ago, a million Londoners took to the streets of this great city to celebrate the end of World War II in Europe. For people of my generation - those of us old enough to remember what became known in the United States as VE Day - nothing can ever compare to the horror of those war years. To even attempt to do so is banal. Yet there is much about the task facing us today that puts me in mind of the challenges and high stakes of that long-ago time. Then, the rich self-rule traditions born and nurtured at Runnymede, at Valley Forge, in the barricades of Paris and elsewhere hung in the balance. Hitler's Germany was many evils, but among them were contempt for democracy, the appropriation of sweeping executive powers, and the intimidation of press and public, coupled with grandiose visions and a wayward moral compass. Unaccountable corporate power, I contend, has brought us perilously close to a similar situation in America today.

This, of course, is not the way things were meant to be. Just as the American political system is legitimated by a belief in the sanctity of the ballot, so the American corporate system, which vests control largely in the hands of privately appointed managers, is legitimated on three major bases. The first is a belief that the shareholders, as the owners of the corporation, have the ultimate right to control it. The second is a belief that corporate managers are accountable for their performance. The third is a belief that placing control of the factors of production and distribution in the hands of privately appointed corporate managers, who are accountable for their performance and who act in the interest and are subject to the ultimate control of those who own the corporation, achieves a more efficient utilization of economic resources than that achievable under alternative economic systems (*Melvin Aron Eisenberg*). In both instances, if you dilute or strip away the foundational beliefs, the legitimacy inevitably begins to collapse. I'll talk later about the political system, but about the corporate system there can be little doubt. Why that is so I will be detailing in the time allotted me today. First, though, let me say that I am here today more as Winston Churchill than as Jeremiah. On November 10, 1942, two and a half years before he announced the German surrender to his countrymen, Churchill delivered yet another memorable speech at the Lord Mayor's Day Luncheon at London's Mansion House. Rommel had been defeated in the African desert. America had joined the fray. Germany was not yet on its heels, but as happens so often in sports contests, the momentum had shifted in a subtle, subterranean way. "Now, this is not the end," Churchill cautioned. "It is not even the beginning of the end. But it is, perhaps, the end of the beginning." And he was dead-on right.

I've titled this speech "The End of the Beginning" in Winston Churchill's honor and, more important, in yours. All of you here today have good reason to be proud of what you have accomplished over the last twenty years against an implacable foe. In the simplest terms, you have made corporate governance a legitimate subject for discussion; you have defined the issues and generated increasingly sophisticated codes of conduct to inform global enterprise. Beyond that, the great institutions have educated themselves as to how they can best discharge their responsibilities as stewards, how they can responsibly act as activist shareholders and how they can hold managements to account. Peter Butler at Hermes has modeled for us all. We also have witnessed that skilled and persistent activists are welcomed on the best corporate boards even as Chairman - think of Ralph Whitworth at Hewlett Packard.

Clearly, we are ready to advance, but clearly, we also have far to go. We have barely begun the process of persuading managements that their best interests lie in encouraging a system of involved and effective ownership. Until we can achieve this objective, full success will elude our efforts. Our reality checks are not geographic progress but institutional ones. How far we have to go can most pertinently be understood through the lens of executive compensation. The persistent increases disconnected from any objective measures are an ugly and well-recognized part of our culture – and a major contributor to broader economic and social problems of inequality. We need go further and witness how the commitment of Western countries to provide employer-financed pensions has been destroyed - with little notice. There are today virtually no companies offering "genuine pensions" in the sense that a return is guaranteed by their employer or the government. Managements posted immediate profit from abolishing the so-called defined plans, while transferring risk of loss from those most able to overcome it to those least able to, the employees themselves. Worse by far, too many CEOs and their top lieutenants have simultaneously feathered their own nests with executive pensions generous beyond all measure, and far beyond any real need. This huge transfer of wealth stands on its head the old and vital balance between management and worker compensation, with potentially dire social consequences.

Corporate language and priorities have captured the American Republic. The allocation of government resources is directed by the imperatives of short-term profit maximization and by a vocabulary of cost/benefit rather than or concern for flesh and blood citizens. While we watched, chief executive officers have acquired autocratic control of the levers of corporate power, which in turn has given them accelerating political power. They are accountable to no one as they direct lobbying and the "legal corruption" of sponsoring political conventions, inaugurations, Presidential debates, and congressional self-monuments, not to mention the "bread and butter" of political campaigns. More alarming still, these lobbying efforts are increasingly "off the books." One might take heart in the fact that the number of registered lobbyists in Washington, D.C., has actually declined in recent years - until one realizes that the amount spent on lobbying has grown dramatically thanks to an ever-expanding network of stealth lobbyists taking advantage of ever-weakening lobbying regulations. This has been nowhere more true than in the finance, insurance, and real-estate sector, which has spent somewhere between $450 million and half a billion dollars annually on lobbying ever since the finance-sector driven crisis of 2007-08. Not coincidentally, one suspects, not a single high-ranking executive of any major finance firm has yet been prosecuted for malfeasances that rocked the entire global financial structure, but that is the subject of another discussion.

Suffice it for now to note that, while ownership has awakened to the challenge, CEO accountability remains largely a myth. Shareholders can neither nominate, remove, nor communicate with directors. The tendency is for the largest corporations to become "drones" in the sense of having no effective owners – that is no owner with more than ten percent of the total. What's more, ownership increasingly is represented by index and algorithm selection in which human decisions as to purchase and sale of particular companies have no relevance. As one might expect, drone corporations on the whole pay fewer taxes, incur larger criminal fines, reward their CEOs with higher compensation, and externalize more liabilities on to society than do corporations having effective owners. That latter point, by the way, includes externalizing onto shareholders fines sometimes in the billions of dollars imposed in civil actions undertaken as the direct result of management actions. Eighty years ago, Adolph A. Berle warned that granting management free rein brought with it "the corresponding danger of a corporate oligarchy coupled with the probability of an era of corporate plundering." Today, this corporate "capture" has found its fullest expression in the decision of the United States Supreme Court in Citizens United. That a Supreme Court Justice could actually argue, as Anthony Kennedy did, that there exists "little evidence of abuse that cannot be corrected by shareholders through the procedures of corporate democracy" shows how far we have sunk into a Never-Never Land of convenient "truths" and rosy shibboleths. Instead of corporate governance, we have devised a kind of shadow play – Kabuki - in which the various constituents act out their assigned roles, culminating in the Kabuki festival we know as the annual meeting. Even shareholder activism, rather than undermining the legitimacy of the current systems, serves a legitimating function at these yearly events by maintaining the illusion that reform for the better is possible and that shareholders have power.

The endless proposals asking for actions to be subject to shareholder consent have not progressed from Melvin Eisenberg's classic judgment: "[U]nder current law and practice, shareholder consent to rules proposed by top management in publicly held corporations may be either nominal, tainted by a conflict of interest, coerced or impoverished. . . . Under prevailing conditions, however, the limits on the meaningfulness of shareholder consent are so substantial that allowing those rules to be determined or materially varied by top managers with shareholder approval often would be functionally equivalent to allowing those rules to be unilaterally determined or materially varied by top managers." And yet - more Kabuki -we continue to keep score of proxy contexts and votes as if important issues were in play. The same can be said of shareholder access to the company proxy for nominations to the board of directors. Here is the *drôle de guerre* in all its glory – words like *nominate, elect,* and *vote* are used for a process that

virtually always results in the election of those individuals whose names are on the proxy card, printed and distributed at shareholder expense, but selected entirely by the incumbents. Similarly, words and phrases like *trustee* and *fiduciary obligation* are promiscuously elicited to describe the functional responsibility of the CEO and board members under circumstances in which their pervasive conflicts of interest are manifest. It is almost as if we dumbly recite the words in denial of the certainty that they will have no effect.

What George Orwell wrote of Political Speak is equally true of Corporate Speak: They are both "largely the defense of the indefensible. . . . A mass of Latin words falls upon the facts like soft snow, blurring the outline and covering up all the details. The great enemy of clear language is insincerity."

By this time, you must be wondering – what is this all about? Where is he taking us? We now have been confronted with the reality that all manner of professionals are conducting serious discussions about corporate governance and arriving at conclusions based on plainly erroneous understanding of key concepts. Is this just an accident? Is everybody being careless? Is this "equilibrium of misconception" accepted because it provides something of value to the principally interested parties?

Institutional shareholders can claim to their beneficiaries that they are monitoring trust assets. Corporate directors can solemnly aver that they are subject to excruciating oversight (all of which justifies their otherwise incomprehensibly large fees). And corporate managers can assign professional advisors to play their roles in this Kabuki drama, all the while unthreatened in their virtually absolute control of the corporate assets and direction. Is there an organizing mind that profits from this confusion and engenders its continuance? Is the corporate governance industry a high profile "smoke screen" that enables the present composition of corporate power – hegemony of the CEO?, Answering these questions is the legacy of this speech. All I will say now is – it didn't get this way by chance, and it won't be changed by a simple laying on of hands.

The inescapable fact is that corporations cannot be effectively monitored or controlled by elements external to the corporation. Simply, corporations can lobby more effectively, can hire better lawyers to control the process of converting laws into public policy, and now - thanks to *Citizens United* - can commit almost limitless corporate funds to turning the political process in their favor. As Louis Brandeis once put it: "We believe that no method of regulation ever has been or can be devised to remove the menace inherent in private monopoly and overweening commercial power." The only internal component of the corporate system with power, motivation, and interest sufficient to act as an effective monitor is the ownership. Here, though, we do have models to build on. Wars produce unlikely heroes -the meek private who storms an enemy bunker. I don't put Carl Icahn in that category. Meek he is not, and self-interest enters freely into his calculations. But Carl has shown repeatedly that a single activist using his own long-term money can generate long and short term results, and in doing so, he has offered both compelling evidence that responsible, active involvement is the key to superlative investment performance and shown the way for a generation of imitators, like him capable of being part of the problem as well as of the solution.

Owners with Skin in the Game - that, my friends, is the magic formula! And that is the challenge for the rest of us: How do we organize the trillions of dollars under management so as to emerge with activists capable of and willing to hold management to account? How can we corral Carl Icahn's energies to more holistic ends? Let me begin to answer that with what is to me a foundational truth: Ownership needs to expand its agenda for the future. In the globalized world of commerce, effective and legitimate corporate functioning will require leadership from the business community and cooperation from governments. The future agenda must deal with at least the following issues:

A – Corporations must have a legal domicile importantly connected with its operations. "Domicile shopping" for the least effective governance regime must stop.

B –All constituencies need co-operate on developing a system of integrated accounting so that corporations stop having incentive to pursue societally destructive practices, and shareholders and customers stop being enablers of conduct that they personally deplore.

C – All publicly traded companies must have "real owners" – obviously, defining the requisite characteristics will require much flexibility as there is no shoe that fits every foot. What is critical is that there exist within the corporate framework an energy capable of acting as "steward" or even "fiduciary" for the stakeholders – capable of dealing with such issues as the permissible level of environmental impact and involvement in politics.

Let me leave you with two thoughts that hearken back to the World War with which I began this talk. Both thoughts would be hyperbolic were I not convinced that the social and economic fabrics of my country are at such risk. The first is a riff on the famous "First they came for …" formulation by the German theologian Martin Niemoller, who survived seven years in Nazi concentration camps: "First the CEOs paid themselves royally, and I said nothing because I wasn't a CEO. Then they ended pensions, captured government, corrupted international institutions, and suborned the judiciary. And finally they came for the owners … me."

Lastly, on a more upbeat note and to return to where I began, this abridgement from Winston Churchill's 1942 "End of the Beginning" speech, inspired by Rommel's defeat at El Alamein: "Henceforth, [those who oppose us]….will meet equally well armed, and perhaps better armed troops. Henceforth, they will have to face in many theatres … that superiority …. Which they have so often used without mercy against others…."

The stakes are high. One reads today of daily attacks on government of, by, and for the people. Holding corporate power to account may well be the best, even the only opportunity to restore a civil society based on enduring human values, but the tide, I truly believe, is turning in our favor. Corporate hegemony is on notice. Management excesses will no longer go unchallenged. The fight that remains will be a long one, but I leave the struggle to all of you with great confidence.

Robert MONKS
Chairman, ValueEdge Advisors

POINT DE VUE INVESTISSEUR

OPPORTUNIST SHAREHOLDERS SHOULD EMBRACE COMMITMENT

Limited-liability, privately-owned joint-stock companies are the core institutions of modern capitalism. These entities are largely responsible for organizing the production and distribution of goods and services across the globe. Their role is both cause and consequence of the revolution in the scale and diversity of economic activity over the past two centuries. So how should we think about these hugely important entities? To answer this question, I will address four narrower ones.
Why do companies exist? What is their purpose? What should be their operational goal? Who should control them?

Why do companies exist?

Why do we have limited liability companies? The answer is that if one wants to organize production and sales of complex products and services, a (semi)- permanent institution may outperform an array of small businesses that have to deal with one another through markets. As the late Ronald Coase taught us, companies exist because; hierarchy – "command and control" – frequently beats markets. Companies exist because markets have limits where complex, long-term planning is required. The advantages of companies derive from the costs of creating and monitoring a vast set of detailed contracts under irreducible and inescapable uncertainty. Organizing many vital economic activities require the scale of an army and the longevity of a tortoise. A life insurer is of limited use if one cannot be sure that it will meet its obligations 80 years hence. A maker of jet engines is of little use if it will be unable to service and replace its engines over their lifetimes. A car manufacturer is likely to be of little use if it is unable to use what it has learned from today's models in making tomorrow's.
The "raison d'être" of the company - its ability to commit for the long term - means that it is built upon relational, or implicit, contracts, contracts that, by their very nature, cannot be fully specified. Why do we have to rely on implicit contracts? Long-term commitments could in theory be managed instead by trying to specify every eventuality. But this would be inconceivably complex and costly. It would also come up against the deeper problem of uncertainty. We have little idea of what might happen in the next few months, let alone the next few decades. In other words, companies are a partial solution to the reality of what economists call "incomplete markets". A company's implicit contracts say, more or less, that the company will purchase one's services for a more or less indefinite period, the company will look after one, and, in return, one will do what the company tells one to do. The genius of the limited liability joint-stock company then was to achieve vital economic ends by importing the hierarchical structures of older institutional forms – civil bureaucracies or armies – within the market economy. In order to make these entities work, one needs vast amounts of capital. In the beginning, that money is mostly provided by shareholders. They would not provide it without the benefits of limited liability, partly because they know they cannot control management effectively. Thereafter, it mostly comes from retained earnings and borrowing. In return for providing risk capital, shareholders are entitled to the stream of corporate profits, whether these are paid out (as dividends or share buy-backs) or are retained and reinvested by the company. If things go well, shareholders have a profitable investment. But, under limited liability, if things go badly, they lose no more than their investment.

What is the purpose of companies?

Let me turn to my second question. What is the purpose of companies? The answer is that it is an institution intended to generate economic value. That is its social purpose. It is the function of any and all companies, subject to an important proviso: the company should not seek to add economic value by inflicting negative externalities, such as environmental degradation.
Society has given the corporate form important privileges. In return, society has a right not only to expect obedience to the law, but decency: even if it were not illegal, dumping toxic waste or rigging one's affairs so as to pay minimal taxes to the jurisdictions that provide the profits is indecent. It is freeloading. A company should, in sum, add value to those who engage with it. It does so by organizing its assets – skills, knowledge, values, traditions and loyalties – into an effective and flexible whole. It is succeeding if it prospers in a competitive market. It fails if it does not.

What should be the goal of companies?

Now, turn to the third question: what should be the goal of companies? Unfortunately, we have accepted a simplistic answer to this question: "maximization of shareholder value ". An obvious difficulty is that if companies are allowed to make the maximization of shareholder value their sole goal, they can (and will) argue that they are not just allowed, but even obliged, to do whatever they can expect to get away with. But these are the values of a psychopath. They would destroy the trust on which civilized society is built. A company aiming solely at maximizing shareholder value might conclude it would be its duty to cheat its customers, abuse its staff, or pollute the air and water if it is allowed to do so (or at last not prevented from doing so). Such a company might use its resources to obstruct an appropriate regulatory response to such (mis) behavior. The only check on such behavior would be loss of reputation. But that is a slender reed. If we believed this is how companies think, many potentially valuable transactions would never be made. Shareholder value maximization is at the least a radically incomplete goal. Ethical restraints must be internalized, even if they are against the interests of shareholders, for the good of society as a whole.

Who should control companies?

Now turn to the last and most significant question: who should control companies? The economic argument for shareholder control is that, while all other stakeholders are protected by contract, shareholders are not. They therefore bear the *residual risk*. This being so, they need to control the company in order to protect their interests.
A practical argument against such shareholder control is that shareholders are unable to exercise it effectively. The main difficulties here are the combination of asymmetric

information (generally, shareholders are ignorant outsiders) with conflicts of interest (generally, shareholders of public limited companies are agents, not principals, and too often they are closer to the management of companies than to their principals) and collective action problems (generally, individual shareholders own a very small share of the company, which means that their efforts at improving governance are shared very widely). Thus, no less a figure than Adam Smith, founder of modern economics, argued: "Negligence and profusion . . . must always prevail, more or less, in the management of the affairs of such a company." His concern here was over the "agency problem". Indeed, it is clear that management, often in place for a short time, may well loot companies for their own benefit, with malign consequences for the company and the economy, as Adam Smith feared. This agency problem is likely to become even worse under shareholder value maximization. In principle, this should mean the maximization of the present value of the company's earnings to infinity. In practice, when dealing with inescapably ill-informed shareholders, managers find it all this all too easy to manipulate the share price, at the expense of the longer-term future of the corporation.

Yet a still more important argument against shareholder control does exist. While shareholders do indeed bear risks in their role as insurers of solvency, they are *not* the only stakeholders to do so. A host of others are also exposed to risks against which they cannot be protected by contract – *indeed, that is the whole point of the company*. Among such groups are long-term workers, long-term suppliers and the jurisdictions in which companies operate. All are likely to suffer long-term damage if a company – particularly a large company – fails. Was Detroit vulnerable to the failure of General Motors? Yes, it was. Were long-term suppliers to General Motors vulnerable its failure? Yes, they were. Were long-term employees and pensioners of General Motors vulnerable to its failure? Again, yes, they were. It is simply false to argue that shareholders and shareholders alone bear the residual risks of companies.

Moreover, shareholders, unlike the others, and particularly unlike employees, can readily hedge their risks by diversifying their portfolios. A worker cannot normally work for many companies at the same time and, other than in exceptional circumstances (professional sports, for example) nobody may own tradable shares in other people, except via taxation.

The doctrines of shareholder value maximisation and shareholder control allows us to pretend that the creation of limited liability companies has not changed the market economy in any fundamental way. But, as Colin Mayer of Oxford's Saïd Business School argues in his book, *Firm Commitment*, this misses the true purpose of the company – the creation of economic value in the long run. To deliver on those purposes, he argues, companies must sustain long-term commitments. But such commitments will only endure if it is costly for parties to be opportunistic. Moreover, it is often in the interests of all parties to bind themselves not to behave in an opportunistic way. But, with the control rights of shareholders on sale to the highest bidder, such commitments cannot be made. Those who make the promises might disappear long before they can deliver.

If people are to make long-term commitments, trust is the only alternative. But a company whose goal is whatever seems profitable today can be trusted only to renege on implicit contracts. It is sure to act opportunistically. If its managers did not want to do so, they would be replaced. This is because, as Prof Mayer argues: "The Corporation is a rent extraction vehicle for the shortest-term shareholders." Aligning managerial rewards to shareholder returns reinforces the opportunism.

In practice, many capitalist economies do mitigate the risks of a market in corporate control. This is true of continental Europe, notably Germany. But it is also true in the US, where the idea that management should be protected against shareholders is accepted in practice, if not in theory. The country that has taken the idea of shareholder control furthest is probably the UK.

Prof Mayer argues that: "The defect of existing economic models of the corporation is in not recognizing its distinguishing feature - the fact that it is a separate legal entity. The significance of this stems from the fact that it is thereby capable of sustaining arrangements that are distinct from those that its owners, its shareholders, are able to achieve." It is, in other words, in the shareholders' interests *not* to control companies completely. They need to be able to tie their hands. Mayer's suggested solution is what he calls a "trust company", one with explicit values and a board designed to oversee them. He justifies such a radical switch with his scepticism about the feasibility and effectiveness of regulation.

Less radical would be to encourage companies to consider divergent structures of control. One might be to vest voting rights in shares whose ownership can be transferred only after a holding period of years, not hours. In that way, control would be married to commitment. One could also vest limited control rights in some groups of workers. This is not to argue that committed long-term ownership is always preferable. Family control, for example, has both weaknesses and strengths. We have to recognize the trade-offs in managing and governing these complex, long-lived institutions. We should let 100 governance flowers bloom. Different models of control and governance are likely to work best for different sorts of companies. But the canonical academic model of the past few decades is unlikely always, or even frequently, to be the best.

Conclusion

In the words of the great H. L. Mencken, "To every complex problem there is an answer that is clear, simple and wrong." The governance of corporations is an extremely complex problem, because of their nature: they are in the market economy, but not of it. Shareholder value maximization and shareholder control are clear and relatively simple answers to that problem. Unfortunately, they are also wrong.

Martin WOLF, CBE
Associate Editor, Chief Economics Commentator, Financial Times

POINT DE VUE INVESTISSEUR

CLOSING REMARKS

It has been truly a great couple of days. As a chair, I have humbly received the many compliments of you, the ICGN members, the speakers and many conference participants. This makes me very proud of the team and all who contributed to making this a great conference. Please join me in thanking them all, especially Sarah, Richard, Vera, Shazia, Beatrice, Gaby, Mariam, Mariane, Helen and Margherita and others who are not here today and of course Kerrie and George.

Also I wish to extend our thanks to our program committee, especially co-chairs Richard Regnan and Frank Curtiss, all our speakers, especially the Lord Major and the Minister, our host the City of London and all our sponsors, without whom this conference would not have been possible. And especially to you, the attendees, this is your conference, your network and you make this as lively and interactive as you did. I have one house hold remark. Please look in your pockets and return any of the voting device, some of which we are still missing. We can look back on a very successful 20th anniversary conference. We received the welcome address from the Lord Mayor followed by an open invitation for our recommendations from the Minister who is in listening mode.

From the founders, we learned about our history and governance 20 years ago. We progressed beyond the right to send faxes and see 3% support for a shareholder resolution as progress. We could have been named ICGO, but the N for network captures the essence better. Still today, we embrace the core principles of transparency, accountability, fairness and responsibility. The relevance of those core principles has only grown over time, and so has ICGN as your network to influence, to connect and to inform.

Yesterday's breakfast session hosted a thoughtful debate on the case for and against differential voting rights, on Florange, being more than a French town in the Moezel, on consequences and alternative remedies, with long term, true stewardship and dialogue coming out on top. The next panels questioned if and how a capital market union will address the worries of our mothers and contribute to the futures of our sons and daughters. More regulation to fix past failures is to be expected, although 70% of the audience believes fully effective regulation is a pipe dream.

Cultutal change and a more holistic lens are necessary, yet difficult to accomplish.

The board room black box was opened. Panel and audience agreed that board room culture balanced with individual expertise and effectiveness are the two most important attributes of effective boards. Culture should be based on trust, respect and balance, allowing, even inviting, and opposing views.

Lunch options covered legal redress as corporate governance element and integration of environmental, social and governance into investment decisions, with insightful examples from practitioners.

In the next panel, we heard how investment beliefs are put into practice, leading to concrete decisions on asset classes and on how contracts with managers are designed. Panelists shared how they are still battling collaboratively to gain further, meaningful proxy access, lacking a universal rule. It was even held to us that with a daily US experience, nothing outside the US shocks our US investing members anymore, while hot air is mounting further. We continued with 5 workshops. We heard about challenges and opportunities in controlled companies in emerging markets and how the battle for necessary change continues in concrete cases. We learned about opportunities the new UK audit report standard holds for investors and we had workshops on investor expectations on human rights and on cyber resilient. Importantly, one of the workshops was devoted to driving the accountability across the voting chain and in this respect I wish to repeat the question that ICGN's Shareholder Rights Committee so fiercely is aiming to answer with a yes in practice: do shareholders have a right to know that their votes are executed as instructed? In the evening we enjoyed a lovely gala dinner, cheered again the 49 founders and had a great jazz event. And although Moneypenny was spotted, unfortunately, our very special guest for the evening could eventually not make it to our party and he was rumored to be involved in a car accident in a Jaguar nearby.

The opening panel this morning addressed sustainable capital market reform Individual behavior - for executives and investors alike - is key, whether being regulated, watched or not. Prescription only is a retreat. Principles elude to awareness, self judgement and self control. Instead of complaining about new regulations, we are encouraged to engage with the regulator about what is effective change. Company engagement and long term thinking we're again confirmed as vital elements to sustainable capital market reform. Europe, being very dependent on banks, is in need of a capital markets union as an alternative way to provide much needed capital to young and SME companies. We heard about whether boards are fit for times to come. Time commitment indeed has grown. In fact, the question was discussed whether there could be too much time spend to conflict independence and how time commitment works may conflict between multiple board positions.

Lunch options included a panel on how to create long term, sustainable success and what boards and investors need to do. Besides pro-active engagement, investors also have to respond to more outreach by companies towards investors. From the panel beyond the financial statement, it became clear there is no one size fits all and the wide variety and amount of qualitative and quantitative reporting. From both panels it is evident that resources are needed and can become an indication of how successful investors can be in effectively addressing their responsibilities.

Martin Wolf spoke about the defecting economic corporation. He gave thought provoking arguments that it is not in the best interest of shareholders to seek control over corporations and seek shareholder maximization as a wrong answer to the complexity of the governance question. Instead, he held it to us that trust is the only alternative for long term commitment.

The final panel gave a global overview of the developments of stewardship in several jurisdictions around the world. Before I make my final reflection, I would now like to turn to our final set of questions which hopefully sums up priorities for each of us to take home and I hope you also interpret the questions in that way.

Ask slide- vote

I saved one reflection for last. Bob Monks gave an inspiring speech convincingly emphasizing the need for real owners and true stewardship. Holding corporate boards to account may well be the only option to return to a civil society more based on human values and Bob made the distinct connection to the remembrance of liberation, which resonated with me personally having cycled back in a Dutch-German remembrance tour last month the route my grandfather took 70 years ago from Dachau back to a home were those very values were to be restored. And I wish to say farewell to you and wish you a safe journey home in that spirit of the continuous battle to restore those human values, to stand up for the right cases, for something that is bigger than ourselves. And please know that you are not alone but part of your network, the ICGN. Thank you.

Erik BREEN

Manager SRI, Triodos Bank and Chairman, ICGN

Nous publions ces travaux avec l'aimable accord de l'ICGN.

André Baladi et Sir Adrian Cadbury, deux piliers fondateurs de l'ICGN, des amis qui ont forgé notre engagement pour une meilleure gouvernance des entreprises, nous ont quittés. L'AFGE présente ses respectueuses condoléances à leurs familles. Jean-Aymon Massie

POINT DE VUE INVESTISSEUR

GLOBAL GOVERNANCE REFORM: PROGRESSION OR REGRESSION?

Panel: Pierre Henri Leroy, President, Proxinvest, Geoff Lindey, Formerly NAPF, Anne Simpson, Senior Portfolio Manager, CalPERS, Sarah Teslik, Sr. Vice President, Public Affairs, Communications and Governance, Apache Corp. **Chaired** by Sophie L'Helias, Senior Fellow, Governance at the Conference Board

Sophie L'Helias: Once upon a time in Washington DC, several people got together and decided that it was time for foreign investors to create a platform to engage. Four of those people, our Co-Founders, are with us today. We're going to have three topics and I'm going to ask a couple of questions. What we'd like to do, is offer you a little bit of perspective of where we were in 1995 in that room, and where we are today. What are the issues that were important then, versus what are the issues that are important today, and what trends we see for the future?

-*Sarah, can you give us a brief history of what things were like 20 years ago?*

Sarah Teslik, Senior Vice President, Apache Corporation: For those of you who haven't been doing this for the 20, 30 or 40 years that we have, we have some seriously experienced people up here. When we were talking on the organizational call earlier, I reminded everyone that when we started out with the Council for Institutional Investors (CII) 30 years ago, we thought it was exceptional if we could file a shareholder proposal and get 2%. Then, when we got 3%, we thought that that was really progress. We never expected a company to do anything about the shareholder proposal that we filed. We didn't expect them to return our calls. In fact, I remember Ceres telling us they couldn't receive faxes from us because the person who receives faxes has gone home, and our efforts to explain that machines receive faxes, not people, did not get us anywhere. That was only 20 years ago that we felt very accomplished for achieving 2%, then 3%, then 5% for an ineffectual proposal that went nowhere. If you ask 'is governance more powerful now', even if you look back only 20 years, there is no answer but yes. We also discussed, on our organizational call, the fact that back then, if you wanted to be active in a company and have influence over a company, you had to buy the shares and you had to buy at least 15% of the shares. I don't know about you, but most of us don't have enough money in our wallets to buy 15% of the shares of any large company. That was because most large institutional investors did not use the vote. I accept some of you here, as the very, very largest, have been using the vote for a long time. Even when I joined Apache nine years ago, and visited our top 100 shareholders, virtually every one of them thought I was asking a compliance question when I asked them 'How do you use the proxy vote?'. When I conveyed that I was not, the answer was 'well, if we hold the stock, we vote for management'. That was virtually every shareholder, just nine years ago. I think we often forget, especially people who are relatively new in the governance world, how quickly times have changed. I remember when we first got enough money – after about ten years in business – to actually sue a company because we realized that shareholder proposals weren't getting us very far. We sued a company because they were conducting an annual meeting and they called off the annual meeting because they realized they were going to lose – why have a vote if you are going to lose? We thought that we should sue them: while we didn't win, we got a teeny bit.

I remember when we first had a company talk to us after a filing a shareholder proposal and they offered us about 1% of what we had been asking for, and we thought that was huge. It was like, 'They will give us something!' It was more like trying to tell an alcoholic they shouldn't drink, and what they instead agree to do is to tell you what labels of scotch they buy. We still felt that somehow that was an accomplishment. The biggest change over the last 20 years is the most unheralded and the most recent one. Now, virtually all of our large shareholders do vote for and against consistently. You no longer have to buy the shares, you just have to know the shareholders. It is much, much cheaper to know shareholders than it is to buy shares. Just two years ago, it only took ValueAct 0.7% of the shares to get Microsoft to agree to put one of ValueAct's 35-year-old employees on their board, without a proxy fight – because they know the shareholders. That's a very much an unheralded revolution but it means that governance has, in the short period of the ICGN's existence, gone from being a policy debate to a power debate. I hope that the panelists can talk about what that means: I fear that we are playing with fire in ways we don't necessarily realize, but it does present opportunities as well. After all, we've gone from, 'heck, we can send them a fax', to 'let's put someone on their board by making 20 phone calls' in 20 years. That's pretty big.

Sophie L'Helias: *Anne, Geoff and Pierre Henri, you come from three very different perspectives. When you look back*

20 years ago, what was your number one reason for starting the ICGN? Why?

Pierre Henri Leroy, President, Proxinvest: Power.

Anne Simpson, Senior Portfolio Manager, CalPERS: Why did I go? Because Bill Crist issued the invitation, so it was the Bill Club! I was invited to the meeting to establish a new body to be called ICGO, the International Corporate Governance Organization. In the end, it became the International Corporate Governance Network, because there was a lot of sensitivity about who was in charge if it was an organization? Was it the Americans, because they called the meeting? Also, what would it be? Would it be some new agency? Would it be a membership body? No, it was going to be a network of those understanding that they had their money not where they could see, and to understand where the money was. For CalPERS, in those days, it was understanding that the money was in other countries. Likewise, Alastair Ross Goobey at the BT Pension Fund and head of Hermes said, 'Well, our money isn't at home either'. The real reason we were all their – and what Bill saw – was that we had to respond to globalization. Why did we have to setup the International Corporate Governance Network? It was to follow the money. It's like the Willie Sutton court case, when they asked, 'why do you rob banks', in his court case? Because that's where the money is! It's the same for ICGN – why do we need to work together? It's to understand what's going on in each other's markets in a very collaborative way, through mutual understanding and mutual support. That was very much the spirit of ICGN: it was a response to globalization. Therefore, if your fiduciary duty was understood in your home market, you had to understand what was going on overseas – even between the US and the UK. We were divided by a common language, with the governance equivalent of you say 'tom-ay-to', I say 'tom-ah-to'. We didn't understand each other's governance systems. We would try to do foolish things like vote, or read proxies, or attend or realize you couldn't vote unless you were there to put your hand up. There was an initial understanding that this needed to be understood in all of these local markets, in order for us to be good fiduciaries in a global market. That was part of our very strongly felt fiduciary duty. This was about ownership, but across borders, and we could only do that if we became partners with each other in those local markets.

Sophie L'Helias: *Our first Chairman is here in the audience today – Bill Crist, former Head of CalPERS. Nothing would have happened without Bill's leadership. Anne made a really interesting point about the globalisation of capital markets. It's hard to imagine, our first meetings with CalPERS tookplace as CalPERS was starting to invest in France. The SEC had prevented US pension funds from investing abroad, so this was a very important time. Pierre Henri, would you tell us why? What was your primary motivation to found the ICGN?*

Pierre Henri Leroy: I came from a different angle, because I came from the financial world and I knew investors had a problem with the investment because they would not dare follow the natural judgement, but they had to follow what was happening in town. That was what I witnessed at Crédit Lyonnais, and that's where I found the idea of creating the first continental proxy agency. I was invited to Washington by André Baladi and I have to thank him for having me joining the club there. I was there at the Watergate Hotel, and Bill Crist – this enormous man, the Chairman of CalPERS – represented significant trade power. We felt like we had God on our side. Indeed, when he came to Paris three years later, the daily newspaper *Libération*, portrayed pension funds as Darth Vader! But it was interesting because that was needed – the impression was that shareholders were seen as nothing. I should say it's still the case in a lot of situations, but things have changed thanks to that mobilization of investors. We designed a way to do things on a very friendly basis, to better understand the issues together. For instance, the French would ignore the concept of 'comply or explain', which is actually a very good concept to avoid writing too much regulation. This came over to us in the following years, and that's part of the success of the ICGN.

Geoff Lindey, formerly NAPF: The reason I was there was all about global accountability. The capitalist system, the free enterprise system, is nothing if managements aren't accountable to their owners – the shareholders. Within the different silos – the US, US investors, the UK, UK investors and France, French investors, etc – each one had a small ability to hold their management of their local companies to account. When we invested internationally, in my case for pension funds, it was very difficult to get any leverage whatsoever when we were trying to get companies to change their ways. Similarly, it was hard for everybody – except CalPERS, but even they had some difficulty – to get any leverage with managements of British companies, French companies, etc. It was a stroke of brilliance on the part of Sarah and Bill to realize that by bringing all the different parties together internationally, we could try to get a unanimity of views amongst global investors, so that the management of these behemoths, the multinational companies, can be held accountable for what they're doing. It was as simple as that.

Sophie L'Helias: *When we started this organization, as Anne pointed out, we had to meet people in person. Telephone calls were very expensive, travel was costly and capital markets weren't really global, even though people were just beginning to explore globalization. Fast forward 20 years and we have the internet, people who are much more global and multilingual, and the most important thing: globalization of capital markets – not just cross-border, but also in sheer size. When you see all of this, what would be the number one positive change that you believe that this networking, through the ICGN, has brought you as an investor?*

Anne Simpson: What the ICGN has brought is an ability to exercise responsibility as an owner: just being big won't do it. There's a shared philosophy – if we look at the ICGN Global Principles today, they're beautifully written, they cover a lot of different issues. People from over 50 countries – who are responsible for a lot of money– companies, advisors and academics have signed off on this, so it's very important. But I want to pay homage to an important group, which included Ira Millstein, Adrian Cadbury and Michel Albert plus representatives from Germany and Japan, who were called upon before the OECD Principles, thanks to Stephen Davis saying 'We want to work out what the toolkit is for all this good stuff'. They said, 'Well, what is it that we have in common and why

would we need to think globally about corporate governance?"

-**The first** thing they agreed upon is that every market needs access to capital: that was evident in the OECD countries. Later, when I went to work at the World Bank and IFC, we thought about that for emerging markets, how that access to capital was necessary for economic development. That's really how the thinking in those five countries and in the OECD got translated into a global agenda.

Those five gentlemen came up with four principles. In order to have access to capital, the first thing you need to offer is transparency. As a community, we've done an enormous amount to improve transparency of information. I remember being at a roundtable in France discussing remuneration, and we were basically told that we were being very nosy and it was really none of our business what anybody earned. This was a matter of privacy, in the same way that what you ate for breakfast might be a matter of privacy. Actually, it's our money, so that's why we're interested!

We've got a lot more to do on transparency. That includes the work of the International Financial Reporting Standards (IFRS) project and the development of an understanding that we need reporting on financial capital; but, as CalPERS' investment beliefs would have it, also on human capital and on physical capital. That's why we're concerned with the sustainability agenda.

-**Their second** principle was that every market needed to establish principles of accountabilities to get access to capital. That looks very different depending on where you are. In the US, we are celebrating because we have close to 50 major companies that are going to allow the owners to put forward candidates onto the ballot for consideration for the board. Also, credit must go to Apache because Apache gave management support for a proposal that Mike Garland at New York had put on the agenda. Even so, we've still got a lot to do in terms of making sure that boards are accountable to the owners and working through issues like controlling shareholders, rules and regulations which are there to frustrate that ownership responsibility.

-**Their third** principle was fairness: that's something that translates easily into any language, and this is where I don't see progress. We're regressing around the concept of one share, one vote, which Erik flagged earlier. The Florange Law, with all respect, is a real problem. We've co-filed with FI Trust, with the help of Pierre Henri and others in France, to try to protect one share, one vote. That's about fairness. You should have influence to the extent that you have equity at risk, and that isn't something that is respected in all markets. But the final principle is perhaps the most important, looking ahead: that's responsibility. If we consider the extent to which human wellbeing, security, safety, soundness, the meeting of human need, can be met through companies, it's extraordinary. The scale and the influence of the corporation globally is immense. There are also risks that come with that. We have to understand that we have scarce resources. We have to understand that there are externalities and consequences. If we're going to have corporate responsibility, we need to have investor responsibility. This is an area of progress that's a new issue for ICGN, on which the Shareholder Responsibilities Committee of this organization's done tremendous work. The idea that rights confer responsibilities has been at the centre of ICGN's work for a long time. We see that in the UK Stewardship Code, we see it in the Japanese Stewardship Code. But there's a lot more to do – not just in terms of the responsibilities of asset owners, but also how that flows through the chain of intermediaries. What do we do about disclosure of votes? What do we do about conflicts of interest? How can we make sure that there's alignment of interests? Ultimately, the money that we're investing belongs to ordinary working people, who have put aside savings for their retirement. The issue is that the capital markets represent savings, but we haven't completed the task of ensuring alignment of interest. We don't have appropriate control at the level of owners. That's the major unfinished business.

Geoff Lindey: I just want to add two small additional comments. One of them is that remuneration policy is much more accountable than it was. In particular, the UK problem of rewards for failure is largely gone, albeit not entirely. The reason that is particularly important is because nothing can undermine the support for the free enterprise system amongst the population more than seeing people paid enormous amounts of money for doing a bad job. It's fairness – it's the same thing. A great deal has been achieved, and a lot more will be achieved. Another thing, which matters a lot to me personally, was that when I was at the formation of ICGN 20 years ago, I think I was the only person there who was a full-time investor. I was employed by JP Morgan as an investment manager: as a consequence, I'm sure I was viewed with great suspicion by just about everybody else who was there because it was felt that I was someone who was conflicted. I think, over the following 20 years that has changed to a large extent. There are still, unfortunately, a number of investment managers who don't take corporate governance seriously, but I think the overwhelming majority of them now, do it properly. Pension funds which are not large enough to do corporate governance or investments on their own, now give their money to investment management firms and can rely on most of them, but not all of them. Most of them do the job properly and overcome any conflicts. And, indecently, if anyone wants to know what I think about Jamie Dimon's comments on proxy voting**,** I'll tell you very quickly. Jamie Dimon was a great leader of a major bank [JP Morgan Chase] through the financial crisis. Since then he's been in charge when some egregious faults have taken place which have cost the shareholders a huge amount of money. He clearly knows nothing about how investors work, how pension funds manage their multiplicity of shareholdings and vote at AGMs. I can't even begin to imagine how he thinks that they can do it themselves without taking advice from proxy agencies. It just shows that a very clever man can occasionally say extremely stupid things.

Sophie L'Helias: it was very interesting when you joined the ICGN: you were with JP Morgan, now you're a trustee of pension funds. As a trustee of pension fund, is governance part of the mission where you engage at the board level?

Geoff Lindey: Absolutely. I don't know what it's like internationally. I'm a trustee of one UK pension fund, and I advise the Pensions Committee, the Investment Committee, of others. All of them have corporate governance on their agenda. I keep on bringing up corporate governance. But the reality that we have to face is that there is huge stress

amongst trustees. There are member-nominated trustees who are employees of the company. For example, I'm a trustee of the Royal Mail Pension Fund and you've got people there whose full-time job has nothing to do with investment whatsoever. There are also management people there who have got other full-time jobs. They come along and they're facing – not in the case of Royal Mail fortunately – the development of large deficits, real funding problems, major hedging problems, problems with lots of regulation and the pensions regulator. I'm sure it's the same elsewhere. They try to 'fit in' the corporate governance issue and hold accountable the people to whom they've delegated it. But in only one of the cases are they able to devote enough time to take it seriously. It's becoming better installed as a part of the accountability chain. Still, the final link is very difficult – finding the investors have enough time on their agendas, at their board meetings, to take this seriously.

Anne Simpson: I agree with that. Look at CalPERS. We had $70 billion taken out of our assets by the financial crisis – the biggest corporate governance failure of all time. A dreadful series of governance failures – at the company level, in banking, at the regulatory level, at the supervisory level. There are other elements as well – the seven deadly sins were in place at full force. If we understand that governance is a way to manage the risks that we're exposed to, then it was one of the major contributing factors to underfunding in pension funds. Rather than rushing off and scrambling around trying to wonder how to make that money up in the short term, we need to step back and think about where value comes from. Where risk comes from. The trustees who serve, much like members of the jury system – citizen fiduciaries – they are people who need time for training and for support. Even so, the great wisdom that trustees of funds bring is that they're not in the day-to-day investment management business and should be able to step back and think about their fiduciary duty. Just to clarify, all the funds think very carefully about policy. I'm talking about the detail of individual votes on individual resolutions, in all the hundreds of companies.

Anne Simpson: Sure, you have staff to do those detailed things. But what the board is responsible for are the principles and the policy. Something that was ground-breaking at CalPERS, after the financial crisis, – because we got hit just like everyone else, being big didn't protect anything or anybody – was the development of investment beliefs. These ten investment beliefs are now the framework for our decision making, and quite serious decisions, have followed from those investment beliefs. Critical to that is a statement that being long term is both a responsibility and an advantage. We have to have a voice with policymakers, with our own fund managers, and with companies. If we don't get the capital markets aligned for the long term, all else that matters is simply under threat. We have to re-orientate to the long term, because that's where our investment returns will be protected; that's where the wellbeing of the corporation and the CalPERS' contribution to wider society lies. If we can't get trustees empowered in that way then the detail that, you know, that's when the hiring comes in.

Sophie L'Helias: Before I turn to Pierre Henri, I just wanted to ask Sarah one question. You understand investors like no-one else with your experience at the CII. Plus, your nine years at Apache mean you're one of the few people who has extensive experience also on the corporate side, running a governance team. What processes have you found most helpful, as an issuer, to engage? What would you recommend other issuers should look at, to just improve that kind of engagement that Anne was referring to?

Sarah Teslik: As all of you know, we in the corporate community are told daily that we should engage more. Sometimes I want to suggest to those who are suggesting that that they should just try it. It's part of my job to reach out to at least our top couple hundred shareholders, to try to meet with them in person. There are still many, many shareholders who will not meet with you at all. Indeed, there are some shareholders that used to meet who increasingly are putting up barriers to meeting because so many companies are asking to meet with them. In fact, there's a little bit of a trend away from meeting. Even when you have a dedicated staff and it's your job, there are those who say, 'Why do you want to talk to us?' Having said that, I think the most important answer to your question is that there is no substitute for having directors of the company meet, in person, with shareholders. You can follow-up by phone later – not with an entourage, not with a deck of slides, not when a vote is pending, over and over and over. It's probably the single most important thing there is in governance. It's not a policy, it's a not a proxy process, it is the people who carry out the oversight, hearing directly from the people who are acting in their interests. It's a visceral thing: it makes it seem real to the board members – shareholders are there and that they matte. It's also the case that there's a significant difference in directors' ability to get consensus within the boardroom: they can say that the shareholder phrased it 'this way'. That's a very different thing than reading about it, it's a very different thing than if I come back to the governance committee and say, 'Our shareholders are saying this." No comparison. If my life depended on creating better governance across the large companies in the US and most developed countries, I would find more reasons for directors to have individual meetings with shareholders where the communication goes both ways. It's not fancy, but it works. It's very difficult to do – perhaps not in the UK or Europe where it is normal. The experience we had a couple years ago in the US, where we started up was that I would call a shareholder and say, 'I've got a director like to come meet with you.' The response, over and over again, was, 'Why, is your CEO on the way out?' It's so rare to have directors meet with shareholders that they assume there's a signaling going on and it's not a pretty signaling. So, somehow, there has to be a move by many companies. If there is a single thing of value to the issuer and shareholder communities, I would say it is the in-person meetings on a regular basis, outside of proxy season, with directors. More than once, too, because the directors have to know that they will come back and see you in a couple of years, so that if you asked for X, and X has not happened, they are the ones who will face the music. We did have our first meetings with our directors with UK shareholders – they were the first people to ask for it. It has been very good for us, and I think very good for our shareholders. There are lots of other things that could be added, but that's the number one. If you forget everything else, just do that: I think it improves the bottom line across the board.

Sophie L'Helias: In this situation, we're seeing much more accountability. Well, transparency, engagement and ultimately, improved accountability at board level which is very unusual. Pierre Henri, your big concern is that companies and their boards are more accountable to investors, but investors themselves also need to be more transparent and accountable.

Pierre Henri Leroy: It actually goes back to what was said a bit earlier by Geoff about him not being conflicted when he acted for JP Morgan. I strongly disagree with him. I think you've been utterly conflicted, but you've been fighting all you could against the absolutely structural conflict you were in. You've done a very good job, given the constraints. Exactly like Jamie Dimon, actually – this man is under incredible constraints. My conviction is that we have been unable to get rid of all those conflict of interests. Instead, we have accepted to mitigate those conflicts of interests. We should have got rid of all those conflict of interests, because we have considered that universal banking was a 'fair moral'. My opinion is that we should seriously question the morals under which we operate. I think that's the reason for most of the issues we have – why intermediaries are not working well, why votes are not confirmed, all those matters – but also the reason why asset management by banks has been so lousy over the years. The point is that the system is impossible. Jamie Dimon is really innocent. In the old, old days at Crédit Lyonnais, there was a chairman who was so fantastically stubborn – I mean, crushed by conflicts of interest – that he stated, publically, that he was very happy to have acquired Altus Finance, because Altus Finance would do everything what the bank could not do, everything what the bank was not allowed to do, and everything what the bank didn't want to do. I'm very optimistic because the ICGN has been taking the right route and technically, we've come back to the old state of having companies being a bit afraid about what we could do as investors. But I think we should also question, seriously, the overarching moral. That's really an issue that has not been tackled within ICGN yet.

Anne Simpson: Jamie Dimon is our perfect example. Think about what happened last year at the vote. There was a proposal on the ballot to establish an independent chair, at the [JP Morgan Chase]. Despite the controversy around the derivatives trades, the 'London Whale' and so forth, support for this independent chair proposal went down from the previous year, not up. The chair – the esteemed chairman and CEO – spent a lot of time on that, rather than running the business. That's the moment of disappointment, although they did strengthen the role of the lead director. However, look at the risk committee. What happened there was that three directors on the risk committee had got close to 50% of a 'no' vote. Two directors stepped down. One was a fine woman, who knew more about museums than banking. The other was the CEO of Honeywell – again, a fine person, but all about the computer business. Then there was a person who Jamie Dimon worked with at Bank One, Mr Crown, in a family business of wealth management. He received a very high 'no' vote and stayed. Then a new person was brought into the risk committee, who happened to be a former employee of Jamie Dimon and his risk department at Bank One. Sometimes, I think we lack the conviction to take things over the line. We have the votes, we had the issue and somehow we don't quite take off. Although I think these votes were high water marks, we were in a position to do much more to ensure that all of the people without qualifications and relevant experience came off the risk committee. We could have made sure there was an independent chairman, and we could've been there to help that board think about how to bring experience and diversity to the table, because that's ultimately what will protect us as long term owners.

Sophie L'Helias: Today, one of the big trends is not just governance, but it's the 'ES' of ESG –environmental and social issues. I wanted to finish with this, because this was not in the original mission of the ICGN. With the Climate Change Summit in Paris this year, investor focus is greater than it has been before. I'd like to ask each of you whether environmental and social concerns and interests are part of your governance programme. In addition, ICGN already has a training programme on ESG – which I highly recommend by the way. Is this is a direction that the ICGN should continue to expand in?

Sarah Teslik: As an employee of a global oil and gas company, environmental and social issues are huge – to us, to the board, to management. There are a range of issues; some environmental and social issues are not 'our' issues. We have had to, on some occasions, communicate to shareholders that is in an important issue, but it is not our issue. We are not a roving commission for the public good. We are not the United Nations. We don't have the bandwidth or the influence on that particular issue. So there are certainly some issues that, for us as a company, are off the table. But there are an awful lot of them that are dead centre, right in our fairway: indeed, many of them are actually leading indicators because so often people focused on things which are seem to be niche at firs are signaling things that will be mainstream core financial issues 20 years from now. Our programs to try and identify who the creative thinkers are are as elaborate as those pursued by any extractive industries company. We can point to many, many things that now make us money, that first cost us money. Ranging from being the first company to recycle water, using brackish water, using field gas instead of diesel, identifying our own chemicals and take the chemical production in-house, working with the Green Chemistry Council to produce green chemicals instead, working with the Environmental Defense Fund and agreeing to test methane emissions equipment that they are developing with our help. All of these are examples of things that now, in a downturn, make us money – that a few years ago cost us money because we had to develop them. So the E and the S, which used to get the 1% on the shareholder proposals, when the governance got the 2%, have very much developed, At least some of them are forward looking indicators. The challenge for many of us, as companies, which I would urge you to work on if you are in a position to do so, is there are so many competing standards, checklists, principles and codes on any number of issues. Soon, you feel like there are mosquitos flying around your head, with everyone wanting you to sign 20 different overlapping, slightly conflicting things – each one of which has one piece that doesn't relate to your company. It is much easier for us to do well on some of these issues if we can say, 'Okay, we get it, this is where the best practice is, this is what we do'. I would also urge

you to be careful of the checklist approach. Try to look underneath that to see what the company is actually doing. I have a great fear that there's too much emphasis on, signing onto 20 different 'best in the world' documents with nothing behind that. Yes, E and S is seeing its day – certainly in the extractive industries. It is often a leading indicator and it can be a terrific moneymaker. In our view, financial sustainability is inescapably tied to all other forms of sustainability. So it's major business for us.

Pierre Henri Leroy: I have little knowledge on this subject, honestly.

Sophie L'Helias: ***Your investors don't ask, don't even look at this?***

Pierre Henri Leroy: No, they do look at this, but they do look at this with, generally, specialized agencies. I should say one thing, which is that we don't see, on the continent, any serious activities from concerned groups. One of the reasons, possibly because they don't recognise the shareholding and the shareholders' powers as a possibility for reform. That's really my understanding.

Anne Simpson: What CalPERS has done is move away from just thinking about corporate governance. In fact, we've renamed the programme 'Global Governance' for two reasons. One, to make clear we understand that we're global citizens, we're global investors, we're international, but also because we understand that this is a very serious responsibility – to make those numbers, to hit those returns – in order to produce the long-term risk-adjusted returns that we pay pensions with. We print this dollar, called the CalPERS Pension Buck, to show members that close to 70 cents on every dollar we pay out in pensions comes from investments. Not just today, not just next week, the next decade, for the best part of a century, because that's where our liabilities lie. If we think of ourselves as being that long-term fiduciary, we cannot ignore other forms of risk. I mentioned our investment beliefs: one of them states clearly that risk for CalPERS is multifaceted and can't be captured through traditional measures like volatility and tracking error. We call out some examples – natural resource scarcity, water, climate change and demographics – there are shifts in the world and environment there that weren't working and we need to be able to capture risk. We also make a statement about value creation. It's often called ESG, but we're thinking of it as sustainability. We're going back to old-fashioned economics and we say long-term value creation comes from three forms of capital being well managed. One is financial capital – that's where we put forward debt, equity, public and private markets, different strategies. However, human capital must be deployed with financial capital to create value. That gives us an interest in people, as employees, as communities. It gives us an interest in labor practices and diversity and inclusion, in health and safety. The third form of capital is what used to be called natural capital and this is why we are concerned about environmental issues. That gets drawn together for us in three different ways.

The first is we want those issues addressed in public policy, that's why we're calling for carbon pricing. We, with other investors, are focusing a lot of attention on the Paris COP meetings. We want carbon pricing, we want subsidies to fossil fuel companies removed. Secondly, we're calling on this to be addressed by the companies that we invest in. We want boards that are competent on these issues, and we want integrated reporting, so you're not filling in 101 surveys. We want it all connected in with the reports that we need to get. The third element is we want our own managers. Most of CalPERS' money is internally invested, but about a quarter of the fund is externally managed, largely in the private asset classes. We want our managers to have integrated these risks and opportunities in a disciplined way, right through their own investment process. We've just gone to our board with a Manager Expectations project that sets out: the factors we want to be addressed; how this should be addressed in the selection of managers; the contracting with managers; and our monitoring of their performance. That's going to be a under review for a year's pilot, and we'll see what we learn. It's hard for me to think about being a global, responsible fiduciary with such long term liabilities while ignoring environmental and human capital issues. I think that would be foolhardy. I think it would be not be fulfilling fiduciary duty. But you need a framework, and really that's why the CalPERS board developed and adopted a set of investment beliefs because it integrates that thinking into our own approach.

Geoff Lindey: I was at a trustee meeting this morning with a fund, which has spent a lot of time structuring a corporate governance framework, although it still has difficulty with the detail. It has grappled a bit with environmental and social issues. It has decided, formally, to take it much further and to appoint consultants, get advice and structure a detailed policy and then appoint a manager to advise on it going forward, and all the funds I'm involved with. I think most funds in the UK, generally, are taking this very seriously now. For all these issues, you have to have some form of agreement, and this actually applies to the ICGN as well. Before I became chairman of the investment committee of the NAPF, one of my predecessors said to me, 'when you're developing policy with your board, remember every general has to be sure that his army is following him'. There's no point in giving orders and fundamental principles if the people who are meant to be supporting you aren't following them. You have to have buy-in, which is why a meeting like this, and all the good work the ICGN does, is important. You have to have a coming together globally of different opinions, so you can get a more monolithic approach from the investment community, rather than a fragmented one which managements will exploit. That goes for corporate governance as well as ESG.

Sophie L'Helias: I find ESG very interesting, and I believe that the ICGN has played a very important role, in bringing an investor community together and building relationships with investors. The learning curve is already there – everyone can reach out to everyone and you can share information. I would anticipate that ESG transformation guidelines will probably be faster than shareholder rights were. We started this organisation and wrote the first chapter in 1995. However, an idea's just an idea: it doesn't become an organisation without the people who running it. Therefore, I want to pay tribute to all the board members, the volunteers, the Executive Directors and the staff of the ICGN who kept this alive for the last 20 years. Hopefully, we'll be here for another 20 years to come. www.icgn.org

POINT DE VUE REGULATEUR

FINANCIAL STABILITY: NEW COMMISSION RULES ON CENTRAL CLEARING FOR INTEREST RATE DERIVATIVES

The European Commission has today adopted new rules that make it mandatory for certain over-the-counter (OTC) interest rate derivative contracts to be cleared through central counterparties. Mandatory central clearing is a vital part of the response to the financial crisis; it follows commitments made by world leaders at the G-20 Pittsburgh Summit in 2009, to improve transparency and mitigate risks.

Jonathan Hill, EU Commissioner for Financial Stability, Financial Services and Capital Markets Union, said: *"Today we take a significant step to implement our G20 commitments, strengthen financial stability and boost market confidence. This is also part of our move towards markets that are fair, open and transparent*."

Today's decision takes the form of a Delegated Regulation the first such to implement the clearing obligation under the European Market Infrastructure Regulation ('EMIR'). It covers interest rate swaps denominated in euro, pounds sterling, Japanese yen or US dollars that have specific features, including the index used as a reference for the derivative, its maturity, and the notional type (i.e. the nominal or face amount that is used to calculate payments made on the derivative).

These contracts are:

- Fixed-to-float interest rate swaps (IRS), known as 'plain vanilla' interest rate derivatives;
- Float-to-float swaps, known as 'basis swaps';
- Forward Rate Agreements;
- Overnight Index Swaps.

Recent statistics show that interest rate derivatives constitute the largest segment of all OTC derivative products, making up around 80% of all global derivatives as of December 2014. The estimated daily turnover in the EU of OTC interest rate derivative contracts denominated in G4 currencies was over €1.5 trillion as of April 2013.

The clearing obligations will enter into force subject to scrutiny by the European Parliament and Council of the EU and will be phased in over three years to allow additional time for smaller market participants to begin complying.

Background

A "central counterparty" (CCP) clears a transaction between two parties, helping to manage the risk that can arise if one party defaults on its payments. By making it necessary for some classes of interest rate derivative contracts, or 'interest rate swaps', to be cleared through CCPs, financial markets become more stable and less risky. This creates an environment more conducive to investment and economic growth in the EU.

In 2009, G20 leaders agreed that standardised OTC derivative contracts should be centrally cleared through CCPs.

The EU co-legislators enshrined these commitments in Regulation (EU) No 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR). According to Article 5 of EMIR, the European Commission, on the basis of a proposal from the European Securities Markets Authority (ESMA), should determine the types of OTC contracts that should be subject to mandatory clearing by a central counterparty (CCP). On the basis of this mandate, the European Commission is adopting a delegated Regulation introducing a clearing obligation for OTC interest rate swaps.

EMIR mandates the European Securities and Markets Authority (ESMA) to review clearing eligible contracts and, with the overarching aim of reducing systemic risk, to propose clearing requirements for products meeting certain criteria.

This is the first clearing obligation that has been proposed by ESMA and it is expected that ESMA will propose obligations for other types of OTC derivative contracts in the near future.

While mandatory clearance through CCPs brings many benefits, it also increases the systemic importance of those CCPs within the financial system, and the consequences if a CCP were to fail. The Commission 2015 Work Programme includes a commitment to legislate for a European framework for the recovery and resolution of CCPs.

For more information on the regulation of derivatives: http://ec.europa.eu/finance/financial-markets/derivatives/index_en.htm

European Commission - Press release, 06 August 2015

POINT DE VUE REGULATEUR

INTERVIEW WITH DANIÈLE NOUY, CHAIR OF THE SUPERVISORY BOARD OF THE SINGLE SUPERVISORY MECHANISM (SSM)

Of the 123 banks that are under your direct supervision, only four are located in Greece. How much of your time is taken up by this small group?

The Greek banks take up the time that is usually needed for supervising an institution. But given the situation in their home country, these banks are of course going through a difficult time.

Meanwhile you may perhaps have slight doubts about your earlier statement that Greek banks were absolutely solvent and liquid.

No, I don't: these banks continue to be solvent and liquid. The Greek supervisors have done good work over the past years in order to recapitalize and restructure the financial sector. That was also visible in the outcome of our stress test. The Greek institutions have experienced difficult phases in the past. But they have never before been so well prepared for them.

On multiple past occasions you have criticized the practice of counting deferred tax assets as capital. Perhaps you are concerned that these make up more than 40% of capital precisely at Greek banks.

That is not only a Greek issue but a general problem.

But it is especially virulent in Greece – because it's only the accounting trick with the tax assets that is saving the banks from failure.

Deferred tax assets are certainly not high quality capital that can fully absorb losses. But we are now in a transitional phase, in which new capital rules are being introduced. When this has been completed, part of this problem will be fixed. But that requires a global approach.

The Greek banks have been on a drip-feed from the central bank for months. But the central bank may only give emergency loans when the institutions are solvent. Who at the ECB decides whether that is still the case – you as supervisor or the ECB Governing Council around President Mario Draghi?

Monetary policy and supervision work in strict separation. We have different staff and are located in different buildings. We share access to data and work closely together in the field of financial stability. Otherwise, we only inform each other about facts of cases for which it is absolutely necessary. When it comes to monetary policy decisions such as emergency loans, it is therefore up to the ECB Governing Council to decide on which banks it classifies as solvent. We carry out our own examination independently.

That sounds extraordinary. What would you do if one ECB board still classified the Greek banks as solvent and the other one didn't?

That is a hypothetical question that I will not answer. I simply do my supervisory job and send the results to the ECB Governing Council.

That does not change the fact that conflicts of interest are looming. The ECB Governing Council must agree to all of your supervisory decisions. But these decisions could have direct consequences for the central bank as the largest creditor of the Greek banks.

I have worked in supervision for forty years, and in France, too, supervision is under the same roof as the central bank. This supposed conflict of interests, which some people repeatedly fear, is something I have never experienced.

The bringing together of banking supervision and monetary policy under the ECB's roof was originally conceived as a transitional solution. In the long term, would you like to see a complete separation of decisions on monetary policy and banking supervision, as called for by the ECB Executive Board member Sabine Lautenschläger?

I could permanently continue working as we do now and don't need a complete institutional separation. But I may be biased as I've been used to working this way in France. Just like Sabine Lautenschlaeger, who is familiar with the strict separation of supervision and monetary policy in Germany, has therefore probably been influenced by her different experiences. I think good supervision is possible under both regimes.

Monetary policy, in turn, has an impact on the banks' situation. Are the institutions, despite low interest rates, still sufficiently resilient to survive economic crises?

As I see it, the institutions are now suffering mainly from the large holdings of impaired loans. They are of course also under pressure from the low interest rates. But these have a good side too: they promote growth; enterprises and households are better off and banks' credit risks improve. What happens next depends on how long the phase of low interest rates lasts.

When could the low interest rates become dangerous for the institutions?

That is not foreseeable in the current situation. But it's just as with any medicine: if you are sick, you should take it. But, if you take the medicine for too long, the side effects will outweigh the benefits. All in all, I see the crisis as a great opportunity for the institutions to reflect on their business models.

Are you referring to German institutions in particular? They have traditionally not been very profitable, also because the market is strongly fragmented.

As supervisor we do not decide on the banks' business models. But we welcome the varied banking landscape in Germany, provided that each bank, in its category, has a sustainable and profitable business model and has sufficient capital and liquidity available.

Small banks in Germany think that ECB supervision poses a threat to precisely this variety. Savings banks and cooperative banks fear that they will be subjected to the same standards as large banks.

But that is not the case. We only directly supervise the 123 significant banks. In the case of the smaller banks, we simply ensure that they are supervised in line with the same regulations. In doing so we are constantly aware of the relationship between the size of a bank and the extent of control.

But SSM representatives have definitely announced that they want to take a closer look at smaller banks too. What will that look like in practice? A "stress test light"?

The comprehensive assessment of the larger banks last year was a very valuable exercise. However, we have no plans to conduct similar tests for the smaller banks. We are only looking more closely at those institutions that are almost large enough to fall under our direct supervision – i.e. those with a balance sheet total of just under EUR 30 billion. So the smaller banks need have no fear about a revolution in supervision.

Will there be another stress test for the large banks this year?

No, there will be no such test this year. But we are of course continuously carrying out smaller, targeted tests with a focus on particular risks. Whenever we ask banks "What would happen if…?" it is a type of stress test. A general, public stress test will be held again next year. But this may well cover fewer than the 123 banks under our direct supervision.

You also intended to take a closer look at banks' internal risk models this year. How far have you got with that – and to what extent have you been shocked by what you have seen up to now?

What was shocking to begin with was the number of models: at the banks that we directly supervise there are 7,000 different ones in use. So, if we were to look at all of those individually without external support we would probably need ten years. So we need to priorities. We will start with the banks that markedly understate their capital requirement through the use of their models; our aim is to find out whether that is justified or whether the parameters need to be adjusted. I am optimistic that we can achieve a good result within two years with some external support. In the long run it would be desirable to reduce the number of models – that

is why I welcome the discussion on this issue in the Basel Committee on Banking Supervision.

Did this shocking number of models also increase your liking for straightforward key ratios, such as the widely discussed leverage ratio?

The leverage ratio should only be a safety net that ensures a certain minimum holding of capital. The ratios have shifted in recent times: the banks are often more constrained by the leverage ratios than by the risk-based capital ratios. That is not a good development in my view.

What bothers you in that respect?

In Germany, say, many banks have an extensive retail banking business that is sound and stable, but not very profitable. That is often accompanied by a relatively large balance sheet, but rather low risks. Why should we call this business model into question by introducing a high leverage ratio. The capital requirements, that are tailored to the business risks, should remain the decisive factor. That is more complex; but simplistic criteria will not get us anywhere.

So you would be opposed to increasing the prescribed leverage ratio from 3% currently to 4% or 5%?

The leverage ratio should not be a moving target. A certain ratio was decided. This rule should first be implemented, which will take until 2018. If it later turns out that this was not sufficient, then, as far as I am concerned, it can be readjusted.

Your statement will please the heads of Deutsche Bank, to whom the "total debt" target causes a major headache.

Possibly, but I don't see it as my task to please or displease certain people.

You may once again annoy them with yet another issue. Your institution also wants to look at the banks' bonus policies. Are there any results on this front yet?

We can't do everything at once. After all, we are doing everything for the first time this year. We intend to look at remuneration as of June or July. Until then we are building on the previous good work of the national supervisors we are not starting from scratch after all.

Do you still feel you are in the start-up phase?

No, we have now completely grown into our role. The start of European supervision was an unprecedented task, but we are already a "game changer". Markets have more confidence in European banks than before. And let's not forget: Europe now has 1,000 additional banking supervisors. That alone should raise the quality of supervision.

European Central Bank
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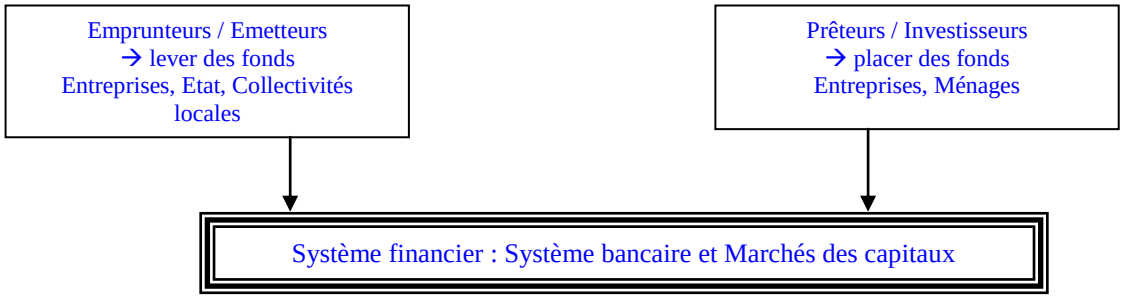
POINT DE VUE UNIVERSITAIRE

LA FINANCE, POUR QUOI FAIRE ?

Un système financier regroupe des institutions (bancaires, monétaires, financières et boursières) dont le rôle est d'assurer efficacement le financement de l'activité économique. A cette fin, il confronte les agents économiques à la recherche de moyens de financement aux agents en excédent d'épargne ou de liquidités. Cette confrontation à lieu sur un marché ou via un intermédiaire (le plus souvent une banque).



Les deux sous-parties du système financier amènent à distinguer l'économie de marché de l'économie d'endettement, c'est-à-dire du financement désintermédié du financement intermédié ou encore de la finance directe de la finance indirecte.

Finance directe ou indirecte, le débat est autre. A quoi sert la finance ?

La finance en général doit, pour être au service de l'économie et de la société, remplir trois fonctions essentielles : apporter des fonds propres aux entreprises, financer les organisations (publiques et privées, Etat compris) par des capitaux d'emprunts et leur apporter à toutes des instruments de gestion des risques.

1. Des dérives non encore rectifiées

Le rôle d'un système financier, banque ou marché, est d'orienter l'épargne vers les financements à long terme à destination des entreprises et organisations.

Pourtant, depuis la financiarisation à outrance des économies, la bourse tout particulièrement s'est détournée de son utilité sociétale de ce financement à long terme. Sur le New York Stock Exchange, selon S. Patterson, dans son livre Dark Pool, la durée de détention moyenne des actions est actuellement de 22 secondes, contre quatre années, soixante ans plus tôt !

Le temps d'exécution des ordres se mesure quant à lui en nanosecondes. En atteste le prix des mètres carrés qui se sont envolés pour les immeubles situés à quelques encablures de Wall Street ; or ce terme, appartenant au vocabulaire marin au départ, prend tout son sens ici : l'envol des loyers de ces immeubles s'explique tout simplement parce que la réduction de la longueur du câble reliant les machines des traders et celles des marchés permet une minimisation du temps de routage et de traitement des ordres, donc une maximisation des profits. Plus encore, un câble a été posé entre New York et Chicago en 2010 spécifiquement dédié au trading haute fréquence pour permettre un aller et retour des

informations en 13,3 millisecondes alors que les deux villes sont séparées de 1 300 kilomètres. La même année, le 6 mai 2010 (en pleine crise grecque !), un krach, nommé Flash krach, faisait perdre 972 points au Dow Jones : 75 000 mini contrats sur le S&P étaient lancés à la vente par un trader pour un total de 4,1 milliards $; simultanément, les arbitragistes ayant acheté lesdits contrats ont vendu des montants équivalents sur le marché des actions ; en quelques minutes, 1 000 milliards $ s'évaporaient. Deux années plus tard, en 2012, un logiciel défectueux introduisait de faux ordres en provenance d'un des plus importants traders à haute fréquence Knight Capital, lui faisant perdre 440 milliards $ en 45 minutes en bourse de New York.

La communauté professionnelle, mais également scientifique, reste divisée quant à l'utilité du trading haute fréquence ; certains arguent d'un accroissement de la liquidité, d'autres d'un facteur de déstabilisation des marchés avec un effet procyclique certain. Déjà en 1987, alors qu'on ne parlait pas encore de trading algorithmique, mais simplement de « trading program », ces programmes avaient amplifié la chute des cours.

Aujourd'hui, alors qu'on revisite la première directive sur les marchés financiers mise en place en novembre 2007 (MIF I) au profit de MIF II qui devrait entrer en vigueur en janvier 2017, il est question de mettre en place une durée minimale de détention des titres de 500 millisecondes !

Au-delà de la bourse qui, via le trading haute fréquence d'une part, les dark pools et autres systèmes de trading multilatéral d'autre part, a réduit son rôle essentiel et historique de financement de l'économie, les marchés dérivés ont perdu, quant à eux, leur rôle de gestion et de couverture des risques.

Ces marchés dérivés sont nés au dix-neuvième siècle pour permettre aux négociants en grains de se couvrir contre les variations des cours des céréales. Progressivement dans les années soixante-dix, ces mêmes marchés se sont développés dans le domaine financier. S'ils sont indispensables à la gestion des risques, leur liquidité et leur fonctionnement ne sont assurés que grâce à des spéculateurs qui font les anticipations inverses de ceux qui cherchent un « hedging ».

Les encours des marchés dérivés s'élèvent, en 2014, à près de 800 000 milliards $, soit plus de dix fois le PIB mondial ; pourtant, selon la Banque des Règlements Internationaux, seules 7 à 8% des transactions sur les marchés à terme seraient dédiés aux besoins de couverture des entreprises industrielles ou commerciales ; alors certes, des améliorations sont à grâce aux lois et directives des deux côtés de l'Atlantique. Les chambres de compensations sont désormais requises afin de standardiser les contrats, mais surtout d'induire une minimisation des risques avec le principe de la contrepartie centrale. Pour autant, seules 40% des transactions sur ces marchés seraient concernés par cette obligation.

En outre, le shadow banking, banque de l'ombre, « système d'intermédiation de crédit auquel concourent des entités et activités extérieures au système bancaire régulé » selon le Conseil de stabilité financière, continue de se développer à outrance. Alors même qu'il fut l'un des premiers responsables de la propagation planétaire de la crise de 2008 (avec la titrisation), il ne cesse de s'accroître : de 53 000 milliards $ en 2010, on l'évalue aujourd'hui aux alentours de 75 000 Mds$! Nul n'est cependant capable de l'évaluer strictement, puisqu'il s'agit d'activités dérégulées, donc non soumises à contrôle des autorités de tutelle. Notons en outre, que la Chine a vu sa part dans le shadow banking passer de 1 à 4%, entre 2007 et 2013, selon la Banque centrale chinoise.

Enfin, les paradis fiscaux, qu'il était question d'anéantir en 2009 lors d'un G20, existent toujours. La liste noire de l'Ocde a certes disparu, mais neuf pays sont encore « partially compliant » et 4 sont « non compliant » sur les 71 pays mentionnés par le rapport de février 2015 édicté par l'organisme supranational susnommé. La dernière évaluation fait état d'un patrimoine de 5 800 Mds€ placés dans ces paradis.

2. Néanmoins Paris a conscience du nécessaire financement de l'économie réelle

Dans cette hyper-financiarisation, comment peut-on définir un pays « friendly finance » ?

La financiarisation se définit tel un processus d'accumulation de profits via les canaux financiers plutôt que ceux de la production ou du commerce, avec un objectif financier, et uniquement financier, pour tous les agents. Cet objectif n'est autre que la chrématistique dénoncée par Aristote. De nos jours, et tout particulièrement depuis les années quatre-vingts, ce fut le fameux RoE édicté comme une norme minimale à 15% et son corolaire le court-termisme qui ont fait oublier les relations de long terme que doivent avoir les banquiers et les actionnaires, et auxquelles ils auraient dû rester fidèles !

Une place financière « friendly finance » s'entend, selon nous, comme dotée d'un système permettant de drainer l'épargne pour l'allouer efficacement aux entreprises : La banque doit financer l'économie dans son rôle d'intermédiation assis sur le principe « les dépôts font les crédits » et rester fidèle à ses engagements ; la bourse doit permettre un rapprochement des investisseurs et des émetteurs en apportant certes de la liquidité aux marchés mais en toute transparence et en gardant une dimension humaine.

Les autorités de tutelle ou les instances politiques en ont conscience, elles ont mis en place certaines règles qui limiteront, au moins en partie, certaines dérives. Mais le chemin sera encore long pour « border » la finance.

A ce jour, la loi Dodd-Frank aux Etats-Unis, la Directive AIFMD ou le règlement EMIR en Europe encadrent désormais certains agents financiers et limitent certaines opérations. En France, la loi du 26 juillet 2013 dite de séparation et de régulation des activités bancaires va dans le même sens de révision de la gouvernance de la finance.

Même si les encours de prêts repartent à la hausse, le bât blesse encore sur les plus petites entreprises. Selon les derniers chiffres de la Banque de France, les encours de prêts ont augmenté de 3,2 % sur un an pour atteindre 708,4 milliards d'euros en septembre 2015. Mais la hausse est bien plus forte pour les grandes entreprises que pour les autres (+4,2% pour les grandes entreprises, +3,3% pour les ETI et +2,8%). En juin 2015, selon la Banque de France, les PME déclaraient obtenir leurs prêts dans 90% des cas (pour les ETI, le taux de satisfaction était de 95,6%). Les TPE, en revanche, déclaraient obtenir un crédit d'investissement dans 78% des cas ; pour un crédit de trésorerie, le pourcentage n'était plus que de 65%.

En conséquence, la place de Paris a compris l'enjeu sociétal du financement des PME et ETI et a décidé de mettre la

finance au service de l'économie via son projet « Place de Paris 2020 » lancé en 2014.
Constatant que le taux d'épargne des français est élevé (15,5% en 2014), le comité a décidé d'un certain nombre de mesures que nous citons ci-après sans exhaustivité :
-Création d'un véhicule (Euro-croissance) spécifiquement dédié au financement des PME avec possibilité d'investissement dans des actions pour transférer l'épargne des obligations d'Etat vers les titres de capital.
-Extension de la souscription des fonds de prêts à l'économie aux mutuelles et institutions de prévoyance (alors que la dite souscription était réservée aux compagnies d'assurance) ; extension des destinataires de cette épargne mobilisée ; depuis fin 2014, les entreprises individuelles, les artisans ou les financeurs d'infrastructure peuvent en bénéficier.
-Allégement du régime fiscal des BSPCE – Bons de souscription de parts de créateurs d'entreprise ; ces titres, créés en 1998, s'assimilent à des stock-options. La loi Macron autorise désormais une société-mère à intéresser les salariés de sa filiale au capital de l'ensemble grâce à l'attribution possible de BSPCE dès que la mère détient 75% de la fille.
Enfin, les Euro-PP font partie des produits particulièrement importants dans le rôle d'un système financier en matière de financement de l'économie réelle.
Face à un risque de « credit crunch » plus élevé pour les petites entreprises que pour les grandes, Euronext a mis en place plusieurs techniques.
L'IBO – Initial Bond Offering est une technique de lancement obligataire, mise en place en 2012, proposée aux PME et ETI afin de pouvoir drainer l'épargne des institutionnels mais également des particuliers.
Les Euro-PP, placement privé obligataire européen, a été étendu à Alternext afin d'élargir le spectre des entreprises émettrices aux PME et ETI, en leur allégeant les formalités (pas de prospectus à rédiger, pas de normes IFRS à respecter, etc.).

3. Une finance soutenable et verte ?

Afin d'être totalement « friendly finance », une place doit également penser à la soutenabilité de la finance pour être « friendly sustainable finance ». Le monde est en effet face à deux dettes : une dette financière évaluée par le cabinet McKinsey à 200 000 Mds$ mais également une dette écologique.
Le « global overshoot day » a été atteint le 20 août en 2014, ce qui n'est autre que le jour à partir duquel la terre a épuisé ses ressources renouvelables sur l'année en cours. En 2015, cette date était celle du 13 août ; rappelons à tout hasard qu'il y a 26 ans, la date est celle du 31 décembre. Aujourd'hui la terre vit, elle aussi, à crédit ! Or nous n'avons pas de planète de rechange.
Une sensibilisation des émetteurs et des investisseurs est incontestable.
Il existe dorénavant des « green bonds » ou obligations vertes.
En 2008, la Banque Mondiale émettait des obligations pour financer des programmes écologiques (de réduction des émissions de CO2, de protection des populations contre des risques climatiques, de traitement des déchets, d'installations éoliennes…).
En 2014, GDF Suez émettait la plus grosse obligation verte à hauteur de 2,5 Mds € pour financer la transition énergétique notamment. L'emprunt a fait l'objet d'une sursouscription de la part d'investisseurs institutionnels français, britanniques et anglais. Parmi eux, on compte nombre de fonds ISR, démontrant le besoin de prise en compte des critères ESG dans les règles d'allocation d'actifs.
L'encours des fonds ISR augmente d'année en année pour atteindre 170 Mds € l'an dernier ; et l'intégration des critères ESG dans la gestion financière concerne 2 265 Mds € en 2013, selon Novethic.

Gageons que la conférence COP 21 sur le climat qui se tiendra à Paris en décembre 2015 confirme qu'une place financière peut maintenir son ambition de finance durable et soutenable.
La gouvernance, selon Stiglitz, doit apporter les réponses aux questions : A quoi sert-on ? Qui sert-on ?
La finance doit servir à financer l'économie et la société. Que cette finance, actuellement en cours de thérapie puisse servir à notre économie actuelle pour construire la société de demain.

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AVIS D'EXPERT

DEUTSCHE BANK, GOLDMAN SACHS ET LE CONFLIT D'INTERETS DANS LA CRISE DE 2008

« Un enfant de cinq ans comprendrait ça ! Allez me chercher un enfant de cinq ans ! » ***Groucho Marx***

« This kind of stuff rarely trades in the synthetic market and will be tough for us to cover that is short to a CDO fool. That said, if you gave us an order at 260, we would take it and try to dupe someone. »

Greg Lippmann*, Head of the CDO Trading Desk, Deutsche Bank.*

Email répondant à un trader de Spinnaker Capital qui lui demandait son avis sur MABS 2006-FRE1, un titre RMBS subprime qui contenait des prêts Fremont et qui était émis par Mortgage Asset Securitization Transactions Asset-Backed Securities Trust (1er septembre 2006).

« During a period of strong global growth, growing capital flows, and prolonged stability earlier this decade, market participants sought higher yields without an adequate appreciation of the risks and failed to exercise proper due diligence. At the same time, weak underwriting standards, unsound risk management practices, increasingly complex and opaque financial products, and consequent excessive leverage combined to create vulnerabilities in the system. Policy-makers, regulators and supervisors, in some advanced countries, did not adequately appreciate and address the risks building up in financial markets, keep pace with financial innovation, or take into account the systemic ramifications of domestic regulatory actions. » ***G20 declaration****, November 15, 2008.*

La crise financière de 2008 : bulle immobilière et produits dérivés Un facteur clé de la crise est le rôle des produits financiers complexes : RMBS, CDO, CDS, naked CDS, et Synthetic CDO. Ces produits ont pris racine sur la bulle immobilière, d'où ils ont foisonné jusqu'à provoquer la déroute des banques. Quelques rappels de définitions pour un enfant de cinq ans.

Les titres de propriété résidentielle associés à des hypothèques « residential mortgage backed securities » (RMBS) : Ces titres sont des répliques des contrats de prêt concédés à un propriétaire acquéreur d'un bien immobilier, et couverts par une prise d'hypothèque sur ce bien. L'hypothèque est un droit du créancier sur la possession et la vente du bien. La production d'un tel contrat titrisé génère un revenu financier pour la banque qui le commercialise.

Les obligations adossées à des actifs « collateralized debt obligations » (CDO) : Les CDO interviennent à l'intérieur d'une structure ad-hoc, un véhicule de titrisation, qui doit été fondé par une banque, laquelle les commercialise exclusivement à destination d'investisseurs qualifiés, c'est à dire des personnes morales qui souhaitent effectuer des placements financiers et qui répondent à certains critères de compétence et de richesse économique et de patrimoine.

Le véhicule achète et détient des obligations, ou bien des titres de contrats de prêts bancaires.

La production titrisée de CDO génère un revenu pour la banque qui l'héberge et qui le commercialise, comme pour les clients acquéreurs des obligations : ce revenu est tout simplement constitué du paiement de l'intérêt de l'obligation par son émetteur, et des honoraires que la banque détentrice facture à l'acquéreur.

La couverture du risque de défaillance de dette « credit default swaps » (CDS), incluant les couvertures référencées à l'index ABX : Un CDS peut aussi bien se désigner comme un « dérivé sur événement de crédit », ou bien encore comme une « permutation de l'impayé ». Le CDS est un contrat de protection conclu entre un acheteur et un vendeur. L'objet de la protection recherchée est un actif qui, détenu lui-même par une tierce partie désignée comme l'emprunteur, est exposé à un risque financier. Risque qui peut être tout autant de défaut de remboursement de l'emprunt, que de mauvaise performance financière de l'actif, allant jusqu'à sa complète disparition économique.

L'acheteur de la protection verse une prime annuelle ex-ante au vendeur de la protection. L'acheteur est qualifié de « court » parce qu'il fait des gains si l'actif montre une pauvre performance, en ce cas il faut vendre vite. La prime annuelle est calculée sur la valeur dite notionnelle de l'actif à protéger. Le vendeur de la protection s'engage à compenser ex-post les pertes financières subies par l'actif en cas de survenue d'évènements de crédit qui sont précisément définis au contrat de protection. Le vendeur de la protection est donc contraint de payer cette valeur notionnelle en cas de survenue d'un tel événement, sous contingence et ex-post, c'est pourquoi son exposition au risque est classée hors bilan. Le vendeur est qualifié de « long », car il fait des gains si l'actif performe positivement, il est alors conservé longtemps dans les livres.

On entend par « évènement de crédit » toute situation qui affecte la valeur de l'actif protégé que les contractants veulent bien faire figurer dans la protection. Il peut s'agir d'un défaut de paiement du débiteur, entraînant l'exigence d'une créance immédiate du prêteur, mais il peut aussi s'agir d'une perte de valeur du bien, voire de sa disparition complète, ou d'une simple modification des conditions de son remboursement au prêteur (restructuration de la dette).

L'International Swap And Derivatives Association propose une standardisation des événements de crédit. Les défauts russes de 2002 et argentins de 2008 mettent en évidence le problème de la définition de l'événement de crédit.

Il existe une version nettement plus risquée du CDS, qui est le CDS établi au bénéfice d'un investisseur spéculateur dans la circonstance où la dette associée à la couverture du risque n'est pas concédée à l'acheteur du contrat de protection : « je me protège contre un évènement de crédit qui ne me concerne pas en qualité d'institution financière et d'emprunteur ». Les « Naked credit default swaps » constituent cette version sophistiquée du CDS, car ce sont des couvertures référencées à des dettes et à des actifs qui ne sont pas entre les mains des partenaires de la couverture (ni l'investisseur et ni l'assureur).

Enfin, les agrégats d'obligations adossées à des actifs dits « Synthetic CDO » sont des obligations détachées des actifs et simplement référencées à des listes d'actifs, lesquels peuvent parfaitement être référencés de multiples fois à des CDO différents. Les Synthetic CDO ont décuplé le risque du marché des titres de dette hypothécaire du fait que les institutions pouvaient les créer en nombre indéfini. Une même créance douteuse titrisée dans un RMBS ou un CDO pouvait être référencée indéfiniment à un nombre d'investisseurs acquéreurs de Synthetic CDO, absolument sans limite. Il suffisait d'inclure dans le périmètre du Synthetic CDO quelques RMBS ou CDO de pauvre qualité afin d'attirer les investisseurs à la perspective d'une opération courte permise en pariant sur la faillite des actifs associés.

Afin de bien situer les choses (un enfant de cinq ans ...), voici un exemple illustré du fonctionnement du « Naked credit default swap » et du Synthetic CDO. Le fond spéculatif A convient de payer à la compagnie d'assurance B une prime annuelle de 2,5% d'une dette de $100 (valeur notionnelle convenue) consentie par la banque C au bénéfice de l'emprunteur D. C et D ne savent pas que A et B ont convenu de ce contrat de couverture. Au cas où la dette de D subit un « événement » de crédit, alors que ni C ni D n'interviennent, B verse à A la somme convenue au contrat de protection.

A est bien un spéculateur : le contrat est un simple pari sur la viabilité économique de l'acteur D qui tente de faire fructifier un actif pour lequel il a emprunté à C.

La partie « courte » s'engage à payer périodiquement une prime d'assurance à la partie « longue » en échange de l'engagement de la partie « longue » de payer la valeur faciale du CDO synthétique si les obligations référencées sont frappées par un événement de crédit tel qu'une dégradation de la cote. Dans les faits, le CDO synthétique installe les termes d'un véritable **pari** dans lequel la partie courte mise sur la pauvre performance des actifs tandis que la partie longue mise sur la bonne performance du même actif.

Que se passe-t-il alors lorsqu'une dette sombre ? Les pertes rebondissent pour l'assureur, la partie longue, sous la forme des montants notionnels à rembourser qui se trouvent multipliés autant de fois que le titre en défaut a été associé à un Synthetic CDO, puisqu'il faut rémunérer l'investisseur de la valeur notionnelle de l'actif qui était convenue au contrat. Alors que dans le même mouvement, la dévalorisation de l'actif se trouve, elle aussi, multipliée autant de fois qu'il était répliqué dans des CDO distincts.

Ainsi, selon le Wall Street Journal, édition du 2 mai 2010, un simple RMBS émis par Goldman Sachs en 2006 sur la base de crédits de la catégorie subprime pour une valeur de départ de $38 million entraîna, deux ans plus tard, une perte de $280 million pour les investisseurs acquéreurs de ces titres.

2004-2008 : faits et chiffres. Entre 2004 et 2008, les banques américaines et les institutions financières - investisseurs et assureurs - ont émis $2,5 trillions de titres de type RMBS et $1,4 trillion de titres de type CDO. À ces opérations s'ajoutent $6,6 trillion de titres RMBS émis par les deux opérateurs publics Fannie Mae et Freddie Mac. Plus de dix mille milliards de dollars de titres associés à des dettes hypothécaires sont ainsi émis, c'est à dire **les deux tiers du PIB nord américain pour la même période**.

Les banques ont facturé l'émission de ces titres sous la forme d'honoraires compris entre $1 et $8 million pour chaque RMBS émis, et entre $5 et $10 million pour chaque CDO émis. De sorte qu'un CDO, par exemple, pouvait générer des bonus pour les employés de la banque de l'ordre de 50% de ces revenus.

Ainsi, Deutsche Bank a perçu $5 million d'honoraires pour la commercialisation de son CDO Gemstone 7, et jusqu'à $30 million pour celle de Camber 7, ou bien de Fort Denison, ou encore de Hudson Mezzanine 1 et 2.

Ces produits ont également été commercialisés sur un second marché déployé dans le monde entier. Ils ont donc permis aux investisseurs de bénéficier du succès des performances économiques des RMBS et des CDO avant l'éclatement de la bulle immobilière des subprimes. Mais ils ont également généré des confortables revenus à l'occasion de la perte de valeur de ces mêmes titres, puisque ces mêmes investisseurs contractaient des services de couverture de risque contre les aléas des actifs ainsi titrisés, des CDS. Les banques elles-mêmes, et les sociétés d'assurance, sont rapidement devenues acquéreurs de leurs propres produits, achetant ces titres et bénéficiant de ces contrats de couverture.

Deutsche Bank : simple rouage de la « machine à CDO » ? En un an (décembre 2006 à décembre 2007) Deutsche Bank, qui est le quatrième émetteur de CDO aux États Unis, référence $11,5 milliard de RMBS dans 15 CDO. Chaque CDO rapporte par ailleurs de $5 million à $10 million aux banques qui les émettent. Dans le même temps, Deutsche Bank parie $5 milliard contre le marché hypothécaire et y gagne en retour $1,5 milliard, tandis que son portefeuille hypothécaire long, qui était d'une valeur de $25 milliard, réalise $4,5 milliard de pertes dès 2007.

C'est ainsi que Deutsche Bank Gemstone 7, un CDO d'une valeur de $1,1 milliard qui comprend des titres RMBS qualifiés par la banque elle-même de « pourris » et de « cochons ». Gemstone 7 produit donc $1,1 milliard d'actifs qui, à peine émis, ne valent quasiment plus rien.

Le grand patron du trading des CDO de Deutsche Bank, Greg Lippman, exprime rapidement la crainte que ce marché soit insoutenable. Mi 2007, il avertit régulièrement ses collègues et ses clients de la mauvaise qualité des actifs reliés aux CDO. C'est alors qu'il qualifie le dispositif qui associe la titrisation à des actifs pourris de « machine à CDO » et de « processus de Ponzi ». Les dirigeants de la banque ne le suivent pas alors, et ils font l'acquisition, sur fonds propres, de $125 million de titres hypothécaires présentant une valeur faciale de plus de $25 million.

Le département de Greg Lippman développe donc une large position courte sur le marché des RMBS, ce qui coûte des millions de dollars de primes à la banque. Dans le même temps, Lippman conduit ses partenaires, les fonds spéculatifs, à prendre des positions courtes sur ce même marché, ce qui rapporte $200 million d'honoraires à Deutsche Bank qui épongent les frais dépensés de l'autre main. Astuce suprême, Lippman accroît la position « courte » de la banque par l'acquisition massive de CDS référencés aux mêmes créances douteuses dont il avait rempli les CDO. C'est la stratégie du CDS « en nom simple ».

En deux ans, Lippman construit ainsi une position courte de $5 milliard dont il récupère simultanément un bénéfice de $1,5 milliard. Malgré les profits permis par de substantielles positions longues, Deutsche Bank réalise une perte de $4,5 milliard sur ses titres hypothécaires. L'affaire du CDO Gemstone 7 explique comment la banque continue à vendre des CDO sur un marché hypothécaire, alors que celui-ci s'effondre déjà. En octobre 2006, le fond spéculatif HBK Capital Management accepte d'agir comme collatéral de la banque pour produire un nouveau CDO que Deutsche Bank assemble dans Gemstone 7, ce qui rapporte à HBK la modeste somme de $3,3 million d'honoraires, tandis que la banque encaisse $5,7 milliard résultant des ventes du CDO. Gemstone 7 assemble des subprimes RMBS pour une valeur faciale initiale de $1,1 milliard au moment de sa mise sur le marché, au premier trimestre 2007, sous la notation triple A

de Standard & Poors et de Moody's. Le tiers de Gemstone 7 est constitué en fait de RMBS à risque très élevé qui sont émis par Fremont, Long Beach et New Century, et qui avaient été apportés par HBK à Lippman, lequel n'hésita pas à les assembler avec des RMBS provenant du propre portefeuille de Deutsche Bank, et qui étaient tout aussi pourris.

C'est alors que Deutsche Bank inonde ses personnels commerciaux de bonus et les pousse à la recherche d'acheteurs en Europe et en Asie puisque, en toute logique, le marché américain se desséchait.

Au bout du compte, Deutsche Bank et HBK doivent tout de même se partager le rachat de $400 million d'invendus de l'aventure Gemstone 7. Et Lippman de déclarer à Rich Rizzo de Deutsche Bank: « We don't have much choice … either we repo for them or we take it down ».

Deutsche Bank se garde bien d'avertir alors les huit autres acquéreurs du CDO, tandis que le fond a déjà perdu $19 million depuis son assemblage. De fait, le fond était constitué à 75% de titres classés BB et BBB, alors que les agences classaient abusivement les deux tiers des titres du fond en qualité « investissement », et non « spéculatif ». Cet affichage autorisait les investisseurs prudents tels que les fonds de pensions, les municipalités et les universités, à se porter acquéreurs du CDO. En juillet 2008, sept tranches du fond étaient dégradées en « junk bonds » et, deux ans plus tard, la totalité du CDO avait une valeur nulle. Ainsi, en juin 2008, M&T Bank dégrade sa position dans Gemstone 7 de $82 million à $1,87 million soit à 2% de sa valeur initiale, Wachovia Bank déclare au sénat que sa position était passée de $40 million à $3 million entre 2007 et 2010 et qu'un an après sa valeur était nulle. Standard Chartered Bank réalise 25% de sa position initiale qui était de $224 million, tandis que Commerzbank perd la totalité de ses $16 million dans Gemstone.

C'est Lippman qui définit la « machine à CDO » dont Deutsche Bank s'était faite un habile rouage : les honoraires étaient tellement incitatifs que les banques ont continué à émettre des CDO constitués de titres pourris faute de quoi, non seulement les bonus et les salaires auraient fondu, mais des services entiers de la banque auraient eux-mêmes disparu, ce qu'aucune organisation n'est jamais capable d'envisager.

Goldman Sachs : corruption des agences de notation et conflit d'intérêt avec ceux des clients Le Sénat américain obtient des dizaines de millions de pages de documents, rapports internes, lettres, tableurs, slides et emails. Il entend 55 témoins et la déposition des dirigeants exécutifs ainsi que des responsables du département des hypothèques. Les agences de notation, les régulateurs et les experts sont également entendus jusqu'à la date du 27 avril 2010, jour où l'audition de tous les responsables de la banque et des hypothèques permet d'exposer 173 pages de synthèse.

Le président de la commission d'investigation, Lewin, et le commissaire Coburn, exposent alors la synthèse de leurs découvertes dans de mémorandum des charges contre Goldman Sachs :

1- Émission de titres sur des hypothèques de risque majeur avéré : De 2004 à 2007, en échange d'honoraires élevés, Goldman Sachs assiste Long Beach, Fremont et New Century pour transformer des prêts hypothécaires extrêmement risqués en RMBS qui sont vendus à des investisseurs, épandant ainsi des milliards de dollars dans le système financier. En 2006 et 2007, le département du trading et des prêts résidentiels déclasse 93 RMBS pour une valeur de $72 milliard, tandis que le département des CDO agit comme vendeur de titres et déclasse 27 CDO constitués de RMBS pour une valeur de $28 milliard. 87% de ces CDO étaient des hybrides, 15% étaient des Synthetic, et seulement 1% étaient référencés à des actifs physiques réels. Les CDO comprenaient, entre autres, les 8 CDO de la plateforme Abacus composée de $5 milliard de titres, un Synthetic CDO sous le nom de Hudson Mezzanine 2006-1, d'une valeur de $2 milliard, un autre Synthetic CDO connu sous le nom de Anderson Mezzanine 2007-1, d'une valeur de $300 million, et un CDO hybride connu sous le nom de Timberwolf 1, d'une valeur de $1 milliard.

2- Amplification et multiplication du risque : Goldman Sachs a amplifié et multiplié le risque financier des hypothèques toxiques en émettant ces mêmes titres RMBS dans des CDO, en les référençant dans des Synthetic CDO, en vendant ces titres à des investisseurs et en recourant à des CDS et à du trading indexé pour encaisser les revenus associés aux pertes que ces mêmes titres devaient immanquablement subir.

3- Déplacement du marché des hypothèques vers les positions courtes : À mesure que les RMBS faisaient défaut, Goldman Sachs a pris des positions nettes courtes sur le marché des hypothèques, y demeurant toute l'année 2007, et a réalisé en cash ces vastes positions courtes, encaissant des milliards de dollars de revenus. En décembre 2006 et durant toute l'année 2007, Goldman Sachs entreprend de bâtir à deux reprises sa position courte sur le marché des hypothèques, engendrant des milliards de dollars de revenus. La première position atteint le pic de $10 milliard en février 2007, occasionnant $368 million de revenu au premier trimestre, net des pertes et des déclassements des RMBS de la banque. Suit alors, en juin 2007, la seconde position courte massive dénommée « the big short » par le Chief Financial Officer de Goldman Sachs, David Viniar, pour un montant de $13.9 billion. Le revenu du troisième trimestre grimpe alors à $2.8 milliard, soit encore $741 million de bénéfice, déduction faite des pertes et des déclassements des actifs.

Globalement, en 2007, les positions courtes de Goldman sur les produits dérivés ont créé un revenu net de $3.7 milliard. Ces positions étaient si vastes et si exposées que le département dut dépasser ses autorisations de risques en permanence, avec l'accord répété des exécutifs de la banque. Au point que le département contribua à 54% de l'indice de risque de la banque, alors que sa contribution prudente n'aurait pas dû excéder 2%.

4- Conflit d'intérêts entre les intérêts des clients et ceux du trader :

En 2007, Goldman Sachs est allé au-delà de son rôle d'intermédiaire de marché pour des clients qui cherchaient à acheter ou à vendre des titres hypothécaires. Goldman Sachs a commercialisé des milliards de dollars d'actifs hypothéqués pour son bénéfice propre, en cachant à ses clients ses propres positions sur ce même marché. La banque a donné instruction à son personnel de vendre vigoureusement les titres d'actifs hypothéqués comprenant des RMBS à risque très élevé et des CDO qu'il fallait sortir au plus vite des livres. Ce faisant, Goldman Sachs a jour un rôle clé dans les

transactions des CDO, promouvant ses propres intérêts aux frais des investisseurs clients.
C'est ainsi que, le 20 mai 2007, le grand projet Goldman Sachs de sécurisation des CDO est présenté en interne, annonçant une fourchette de $248 à $440 million de déclassements de titres. La présentation finale de ces perspectives omet tout simplement de mentionner aux dirigeants exécutifs de la banque que la position des CDO est entièrement menacée de dépréciation.
Harvey Schwartz, l'un des exécutifs de la banque, exprime alors le risque qui consiste à vendre des CDO à des clients pour les déprécier le lendemain : « I Don't think we can trade this with our clients and [sic] then mark them down dramatically the next day ». Au même moment, le directeur des risques Craig Broderick recommande d'exécuter le suivi accentué et l'anticipation des dépréciations du marché, ainsi que l'identification des clients de la banque qui sont les plus exposés aux dépréciations décidées par la banque elle-même. Broderick demande que la banque dispose activement du cash collatéral face à ces positions exposées.
L'on ne pouvait pas moins faire.
5- Tromperie sur le fond CDO Abacus : Goldman Sachs assemble un fond CDO dénommé Abacus 2007-AC1 dont elle a caché la véritable nature à Moody's en omettant délibérément d'indiquer qu'un fond spéculatif client avait pris une position dans ce fond et qu'il avait aussi participé à la sélection des actifs référencés. Goldman Sachs n'a pas dévoilé ces manœuvres auprès de ses clients de ce fond.
6- Recours à des « Naked Credit Default Swaps » :
Goldman Sachs contracte des Naked credit default swaps (CDS) sur des actifs qu'il ne détenait pas dans le but de parier contre le marché hypothécaire en son nom simple, et par l'intermédiaire de l'indice des transactions de CDS. Goldman Sachs encaisse ainsi des revenus substantiels.

Conclure ?

Personne ne fait vraiment la part des responsabilités dans la crise financière de 2008. Personne ne se risque à en mesurer les conséquences économiques et humaines. La lecture des positions de chaque expert se dilue dans des explications systémiques. Les commentaires idéologiques ne servent à rien. Une autre manière d'y voir clair consiste à identifier les auteurs des publications qui avaient clairement annoncé par avance le risque et qui avaient précisément évalué les processus toxiques et l'ampleur de leurs conséquences.
Parmi ceux-ci, la communauté internationale place systématiquement en tête l'australien ***Steve Keen*** *(auteur de « L'imposture économique », préface de* ***Gaël Giraud*** *sj) et, en seconde position, le turc Nouriel Roubini. Suivis de l'américain Dean Baker, le fondateur du Center for Economic and Policy Research, et de son confrère de la Columbia University, Joseph E. Stiglitz.*
Mais revenons à Groucho Marx. Dans une autre fiction, celle du film américain « Morning call » (J. C. Chandor 2001), le directeur de la banque comprend instantanément (!) que l'on est au bord du gouffre. Alors ce n'est pas un enfant de cinq ans qu'il envoie chercher. Mais c'est le plus jeune des traders, le dernier embauché, celui qui analyse simplement les facteurs de risques car il n'est pas encore englué dans les problèmes de bonus et d'achat de grosses voitures. Celui qui a donc déclenché l'alarme, en pleine nuit.
Deutsche Bank et Goldman Sachs : ces récits véridiques extraits du rapport des sénateurs ***Carl Levin*** *et* ***Tim Coburn*** *ne doivent pas disparaître sous le flot des analyses sophistiquées et rationnelles, ni des affirmations idéologiques. Car « c'est aussi simple que cela ».*

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AVIS D'EXPERT

L'EXTRA-TERRITORIALITE DU DROIT AMERICAIN TERRIFIE LES GRANDS PATRONS

De quoi ont peur les grands patrons ? Certainement pas des hommes politiques et encore moins des autorités de contrôle ou de la justice française. En revanche, l'extra-territorialité du droit américain est devenue la terreur des états-majors des grands groupes internationaux. A travers une législation très stricte (embargo, loi anti-corruption, contrôles fiscaux etc…) les Etats-Unis utilisent leurs superpouvoirs pour se poser en gendarme des affaires pénales internationales. BNP, Siemens, Alcatel ou encore Alstom en ont fait les frais récemment. La procédure est très intrusive et les grandes entreprises françaises sont mal préparées.
La nature a horreur du vide. La faiblesse des législations nationales pour faire respecter les règles du jeu des affaires édictées principalement par les Etats-Unis, donne à l'extra-territorialité de la loi américaine tout son sens. Il est rare que l'opinion internationale se dresse contre un embargo américain, qu'elle trouve normal la corruption d'agents publics étrangers ou encore qu'elle soit prête à encourager l'évasion fiscale. C'est là un boulevard pour la justice américaine qui ne dédaigne pas de s'appuyer sur l'opinion publique pour légitimer ses sanctions. Il devient d'autant plus facile pour les Etats-Unis d'imposer leur diktat aux entreprises de tous les pays. Tel, le super héros marvelien, le Department of Justice (DoJ) ambitionne de faire régner l'ordre international.
Voilà pour le côté face, le côté pile est beaucoup moins sympathique et ce sont les actionnaires qui en font les frais. Les sanctions américaines sont un vrai centre de profit pour l'administration qui dispose de moyens d'autant plus importants qu'elle inflige des pénalités qui se chiffrent en milliards d'euros. Le procureur américain veut des gros poissons. Or, ces amendes affaiblissent les entreprises qui sont prises dans les filets. Et il est facile de comprendre que les grandes multinationales d'origine françaises sont des cibles toutes indiquées. Car, en matière de corruption d'agents publics étrangers, la législation française semble inefficace et la volonté d'aller à la pêche aux infractions rarement activée. Un seul cas de sanction a été relevé depuis 2000: Safran en 2012. Rien à voir avec la sévérité du Foreign Corrupt Practices Act (FCPA), la loi américaine anti-corruption.

Comment s'y prend la justice américaine pour pêcher les gros poissons ? Le Foreign Corrupt Practices Act (FCPA), est une espèce de drone à la disposition de la justice américaine qui va lui permettre de s'introduire dans n'importe quelle entreprise, quelque soit sa nationalité et quelque soit son activité.
Le champ d'application du FCPA est très large et vise à s'attaquer à toute société qui pratique la corruption d'agents

publics étrangers. Il permet ainsi de poursuivre toute entreprise étrangère, coupable d'actes de corruptions, pourvu qu'elle ait des activités en lien avec les Etats-Unis. Ce lien peut tout aussi bien consister en une cotation au New York Stock Exchange, l'envoi d'un mail via des serveurs basés aux Etats-Unis ou encore des opérations réalisées en dollars.

C'est le fameux Department of Justice (DoJ), qui officie. Il dépend de l'administration américaine et peut compter sur l'appui des autres administrations et services : la police du FBI, la Securities and Exchange Commission, gendarme des marchés ou l'Internal Revenue Service (IRS), l'équivalent de notre administration fiscale. Les superpouvoirs du DoJ sont donc renforcés par des super-moyens. Ils sont essentiels pour mener ses enquêtes à l'autre bout du monde et pour réunir des preuves qui obligent ensuite les entreprises visées à coopérer. Très intrusives, ces enquêtes peuvent être une épreuve longue et pénible pour les entreprises qui ont nagé en eau trouble et se trouvent prises dans les filets.

Pourtant, les dirigeants d'entreprises et même ceux des plus grandes négligent encore trop les risques juridiques liés à de possibles sanctions. Non seulement les pénalités, mais aussi les frais d'avocat qu'ils vont devoir engager pour présenter leur défense et souvent négocier, sont très importants. Aux Etats-Unis, on a l'habitude de dire qu'il faut compter « 1$ de frais d'avocat pour 1$ d'amende », ce dont les entreprises et leurs actionnaires n'ont pas toujours conscience.

Depuis peu, avec la vague d'amendes américaines jumbo, les entreprises françaises ont été sensibilisées au risque réel encouru en cas de violation du FCPA, mais savent-elles vraiment ce qui les attend ?

Voici donc comment la procédure se déroule : La procédure démarre comme n'importe quelle instruction à partir des soupçons du DoJ sur une entreprise qu'il suspecte de s'être livrée à des actes de corruption d'agent public. Ces soupçons peuvent être initiés par des lanceurs d'alerte, des plaintes d'entreprises concurrentes ou des informations parues dans les journaux étrangers comme cela a été le cas dans l'affaire Siemens.

Dès qu'il estime les allégations fondées, le DoJ contacte les dirigeants de l'entreprise afin de leur faire part de ses suspicions et leur demande des éclaircissements sur l'ensemble de l'affaire.

Il sollicite d'emblée la coopération de l'entreprise. Sa démarche consiste à lui demander de faire sa propre enquête interne, sachant que l'entreprise ne sait pas toujours de quelles informations dispose le DoJ. Cette approche présente un gros avantage. L'administration qui fait souvent référence à des faits passés, peut ainsi gagner du temps. Et surtout, cela peut lui éviter si l'entreprise joue le jeu, d'avoir recours pour ses enquêtes à des procédures de coopération policière entre Etats, souvent lourdes et compliquées.

Le DoJ, lorsqu'il a mis un pied dans la porte, va réclamer à l'entreprise tous les documents dont elle dispose sur l'affaire en question. Il peut s'agir de tous les contrats, des versements, des mails, du nom des personnes en lien de avec l'affaire.

L'entreprise peut décider de ne pas répondre aux sollicitations de cette administration, mais c'est une attitude risquée car ce dernier peut décider de lui infliger des sanctions administratives telles que le retrait d'une licence bancaire ou l'exclusion des procédures de marchés publics ce qui peut s'avérer désastreux au plan des affaires. C'est notamment ce qui est arrivé à la banque Standard Chartered, qui refusant de répondre aux sollicitations du DoJ s'est vue menacer du retrait de sa licence bancaire. Menace qui l'a contraint en 2012 à s'asseoir à la table des négociations.

L'entreprise qui décide de collaborer avec le DoJ afin de faire toute la lumière sur toute l'affaire peut se faire assister par des cabinets d'avocats et d'audit spécialisés dans ce genre de procédure d'analyse. Il faut alors prévoir d'y consacrer d'importants budgets.

Tout au long de cette phase d''inspection, le DoJ et la société vont procéder à des échanges de documents, des entretiens et vont garder un contact régulier. Cette phase de la procédure n'est pas limitée en termes de durée, d'objet. A tout moment, le spectre de l'enquête américaine peut être élargie par le DoJ, selon les découvertes qui jalonnent cette étape.

D'autres organismes interviennent généralement. Du côté français, le Service Centre de Prévention de la Corruption (SCPC), en application de la loi de blocage, va s'assurer que les informations communiquées par les entreprises ne soient pas de nature à porter atteinte aux intérêts nationaux. Du côté américain, le DoJ pour analyser les documents envoyés par l'entreprise se fera quant à lui assister par le IRS, le fisc américain, la SEC, le gendarme des marchés financiers ou le FBI. Ils vont éplucher les documents pour déceler toutes les anomalies comptables, financières ou même fiscales.

Si, lors de la phase d'enquête, il ressort des éléments du rapport qu'il y a bien eu une infraction au FCPA, le Doj va tenir compte de plusieurs éléments pour déterminer les suites à donner à la procédure.

Le Non Prosecution Agreement : Il va par exemple, tenir compte du fait que la société disposait déjà d'un programme de contrôle et de prévention des infractions efficaces mais qui a été contourné par des salariés ou agents. Il sera enclin à plus de clémence, si toutes les mesures nécessaires avaient été prises dès la découverte des infractions par la société elle même, afin de mettre fin aux pratiques litigieuses. Le DoJ va également chercher à comprendre s'il s'agissait ou non d'un système de corruption institutionnalisé. S'il s'agit, au contraire, d'un acte isolé, que les dirigeants ne pouvaient pas soupçonner, le DoJ prendra ce fait en considération et proposera la signature d'un « Non Prosecution Agreement » (NPA).

Il s'agit d'une transaction qui stipule que des poursuites ne seront pas menées ni contre la société ni contre ses dirigeants.

A la conclusion de cet accord, l'entreprise est amenée à signer un « statement of facts », rédigé par le DoJ, qui constate les faits. Ils peuvent être accablants pour la société et il faut craindre parfois que l'entreprise ne soit pas tout à fait d'accord avec la description qui en faite. Cependant, il ne s'agit pas d'une reconnaissance de culpabilité et les avocats incitent généralement leur client à signer car sinon, ce qui les attend peut être beaucoup plus coûteux.

La signature de cet accord a néanmoins des effets importants: elle engage l'entreprise à ne jamais contester publiquement les faits tels qu'énoncés dans l'accord. Signer un « statement of facts » n'est pas anodin. Il peut avoir des conséquences en terme de sécurité juridique puisqu'en cas de procès devant une autre juridiction l'entreprise verra sa défense liée aux faits constatés par écrit par le DoJ.

Le NPA prévoit aussi que l'entreprise fasse également une déclaration dans laquelle elle s'engage à veiller à ce que ce type d'infractions ne se reproduise plus dans l'entreprise.
Le DoJ prononce ensuite une amende, qui, le plus souvent, a été négociée avec l'entreprise et ses avocats, en tenant compte de sa bonne foi, de sa coopération et de la gravité des faits.

Le Deferred Prosecution Agreement : Lorsque le DoJ constate que l'entreprise n'avait pas de programme contrôle et de prévention efficace, qu'elle n'avait prévu aucune procédure permettant à des lanceurs d'alerte internes, de rapporter les faits, que ceux qui tirent la sonnette d'alarme ne sont pas protégés ou s'il constate plus généralement que le système de prévention des infractions de corruption, était défectueux, les sanctions s'annoncent plus sévères.
Dans ce cas, le Doj enclenche un DPA (Deferred Prosecution Agreement). Cet accord tire son origine d'une loi de 1974, le Speedy Trial Act, autorisant les procureurs à différer les poursuites avec l'autorisation du tribunal.
Le défendeur c'est à dire l'entreprise incriminée bénéficie alors d'un sursis durant lequel elle peut « se racheter ». Cet accord peut dans certains cas être homologué par un juge fédéral, ce qui lui donne plus de poids et permet au DoJ d'engager des poursuites en cas de non respect des mesures qu'il va alors imposer.
Cet accord peut être secret ou rendu public par le DoJ. Il prévoit le paiement d'une amende, souvent plus importante que celle prononcée dans le cas d'un NPA, et la mise en place d'un programme de compliance (éthique et conformité) sévère au sein de l'entreprise.
Il arrive également qu'il s'accompagne de sanctions de nature administrative comme l'exclusion provisoire des procédures d'appel d'offre américaines.
Le programme de compliance vise alors à mettre en place des procédures de contrôle et de prévention des infractions efficaces, au sein de l'entreprise. En règle général le DoJ va mandater un « monitor » indépendant spécialisé dans les procédures de compliance. Il sera choisi parmi ceux proposés par l'entreprise. Ce « monitor » est chargé de veiller au bon déroulement de l'opération et de tenir au courant le DoJ durant tout le déroulement de la procédure, de tout ce qui se passe chez le défendeur. La durée du mandat du monitor varie en fonction de la taille de l'entreprise et des mesures à mettre en place. Elle est fixée par le DoJ.
Cette étape est très contraignante pour l'entreprise puisque le monitor dispose d'un pouvoir de contrôle et de vérification étendu. En effet il peut réclamer que lui soit communiqués tous les documents qu'il estime nécessaire à la réalisation de sa mission.
Cela peut présenter des risques s'il s'agit de documents stratégiques concernant les politiques de développement à l'international, les techniques de commercialisation ou encore de méthodes de management. En termes d'intelligence économique, l'entreprise peut redouter que des informations importantes soient transmises à la concurrence.
Le Service de Contrôle et de Prévention de la Corruption (SCPC) sert alors de garde fou. C'est par lui que transitent les communications entre le DoJ et le monitor. Sa mission est de veiller à ce que les informations transmises au Doj ne soient pas de nature à porter gravement atteinte à l'entreprise. Le SCPC opère donc comme un filtre.
A la fin de son mandat, le monitor remet son rapport final au DoJ. C'est le compte rendu de mission. Si le DoJ constate que le programme de compliance a été correctement mis en place, il fait homologuer le DPA par un juge fédéral. Cette homologation relève souvent d'une simple formalité. Elle assure à l'entreprise que de nouvelles poursuites ne seront plus intentées contre elle et contre ses dirigeants s'agissant de l'affaire en question. La procédure est à ce stade close.
Lorsque le rapport témoigne d'une mauvaise exécution de l'accord par l'entreprise, celle-ci s'expose à des sanctions pour inexécution d'un contrat. De plus, il est mis fin à la procédure de transaction et de négociation avec l'administration et le contentieux est transféré devant un juge fédéral.

Le Guilty Plea : Lorsque le DoJ constate que l'entreprise n'a pas coopéré et qu'elle n'a pas répondu à ses sollicitations. Ce qui est parfois le cas, lorsque celle-ci pense par exemple qu'elle va gagner du temps ou qu'elle redoute les rouages de la justice américaine pour des faits qu'elles considèrent comme enterrés ou mineurs, le DoJ déploie alors d'importants moyens financiers et humains pour mener l'enquête de son côté. C'est alors que ses super pouvoirs et ses super-moyens deviennent le plus redoutables.
S'il relève une infraction, le DoJ peut infliger des sanctions administratives ou arrêter toute personne qu'il soupçonne d'avoir commis des actes de corruption ou qui serait liée à l'affaire litigieuse, dès qu'elle met les pieds sur le territoire américain. L'effet est généralement immédiat. Il s'agit là d'une véritable alerte pour l'entreprise qui prend conscience de la gravité de la situation et décide généralement de coopérer.
Il arrive aussi que l'entreprise réponde aux sollicitations mais que le DoJ estime qu'elle fait preuve de mauvaise foi en essayant de dissimuler des informations sensibles qui pourraient démontrer sa culpabilité. Elle peut aussi ne pas mettre fin aux pratiques litigieuses en essayant de rendre plus complexes ses méthodes de corruption en particulier, afin de les dissimuler.
Si le DoJ parvient à démontrer ces faits, il constate alors la culpabilité de l'entreprise et décide de la sanctionner fermement.
Cela suppose qu'il dispose suffisamment d'éléments probants pour confirmer la culpabilité de la société et de ses dirigeants, ce qui est souvent le cas lorsqu'elle a arrêté des salariés qui sont passés aux aveux.
En position de force, le DoJ soumet alors les dirigeants de l'entreprise à un Guilty Plea (plaider coupable). Il s'agit d'un accord par lequel l'entreprise reconnait sa culpabilité. Souvent elle n'a pas d'autre choix que de le signer, étant donnés les éléments à charge contre elle.
La procédure quitte alors le domaine de la transaction avec l'administration et c'est le juge qui intervient. La procédure est cependant allégée et accélérée et le juge prononce rapidement une sanction avec à la clef le paiement d'une amende. Les cas les plus récents montrent que la sanction peut être très lourde. S'il est toujours possible aux avocats de l'entreprise de tenter de négocier le montant de l'amende, leur marge de manoeuvre devient limitée compte tenu des faits et de la reconnaissance de culpabilité qui a été faite.
Que ce soit, le NPA, le DPA ou le Guilty Plea, ce type de transaction pénale peut paraitre très choquant de ce côté-ci de l'Atlantique. Primo parce qu'il s'agit d'une forme de

justice qui met un prix sur les infractions plutôt qu'elle ne punit, mais surtout parce que les droits élémentaires de la défense sont parfois négligés.
Cependant, ce que l'on appelle encore le Deal of Justice, est monnaie courante aux Etats-Unis dans les affaires de corruption et le procès est l'exception. Les avocats américains poussent leurs clients à accepter ces deals partant du principe qu'une mauvaise conciliation vaudra toujours mieux qu'un bon procès dont personne ne sait comment il se terminera. Ainsi, est-il devenu extrêmement rare d'assister à des procès ayant trait à des affaires de corruption, avec la possibilité pour les avocats d'exercer les droits de la défense.
Les entreprises étrangères prises dans les filets de la justice américaine, préfèrent reconnaître les faits et négocier une amende même très lourde, plutôt que de prendre des risques en termes d'image et de perdre des affaires aux Etats-Unis.
A terme, les amendes qu'il faut révéler aux actionnaires, ajoutées aux changements qui s'imposent à l'entreprise, peuvent avoir un effet vertueux à long terme sur les pratiques commerciales. Les dirigeants qui ne jouent pas le jeu savent en tout cas maintenant clairement à quoi leur entreprise est exposée, si des faits de corruption échappent au contrôle interne qui s'impose désormais.

** Nous remercions Maître Stéphane de Navacelle, avocat aux barreaux de Paris et New-York, spécialiste en droit pénal des affaires, qui nous a éclairé sur la procédure FCPA.*

www.minoritaires.com

Nous reprenons cet article, publié par minoritaires.com le 29.06.2015, avec l'aimable autorisation de la rédaction de la publication. minoritaires.com est un media indépendant d'informations en ligne, édité par Sphère Finance Publications, fondé par la journaliste grand reporter Marie-Jeanne PASQUETTE, rédactrice en chef, exerçant depuis 25 ans des fonctions de journaliste spécialisée dans le domaine économique, financier et la déontologie financière.

POINT DE VUE INVESTISSEUR

VIP sight - September 2015 : BUHLMANN'S CORNER
"TIS THE FINAL CONFLICT"

So says The Internationale. "Arise ye wretched of the earth, we have been naught we shall be all". As I write this, entire peoples are on the move, marching towards the North and the West, fleeing grinding poverty and blazing warfare that organizations on the ground are powerless to halt and international organizations such as G7, G8 and G20 etc seem to be doing their utmost not to interfere with or forget about. We are witnessing a migration on an unprecedented scale that some people find scary. What we see of the entire humanitarian crisis, however, is only the part that looks like getting too close for comfort to us as humans.
Taxpayers' money is frittered away building walls and boundaries instead of filling the granaries with food and nobody gets angry at such infantile behaviour. It is nothing short of criminal - we are all enamoured of the idea of being good people as we smother the answer to the problem under fathoms of red tape or, failing that, pass the buck to our neighbour. What kind of an idea is it to have the trains run all the way to Denmark without stopping. Or to be wilfully obtuse like England and France. And there are precious few red carpets and welcoming fanfares for refugees from Africa and the Near East in places like the former DDR where, by history's cruel irony, the people were hemmed in behind a wall that stood for forty years.
Take a closer look and you see a gigantic economic promotion project afoot to benefit the target countries and keep the balancing act going by shoring up a state of affairs that is perilously close to collapse. From the responsible standpoint, it stands to reason that the economic drive generated must be channelled (as it should be) towards economic development in the countries being abandoned. If not, the world of the future will be a combination of endless tracts of uninhabited land and elsewhere masses of human beings living together packed like sardines. Make no bones, this is an issue that dwarfs EMEA and even eclipses the rejuvenation of the ageing cultures from Bavaria to Lower Saxony.
Whining, pointing the finger and intoning "Brüder zur Sonne zur Freiheit" (a song written in 1895 in a Moscow jail and sung for the first time by political prisoners during their forced march to exile in Siberia) is not a responsible answer.
Shrugging responsibility off to someone else who in turn will pass it on – a nefarious irresponsible mechanism we're all too familiar with (see asset management etc) is a sure fire way of ruining the future before it arrives.
Otto von Bismark famously remarked in the North German Reichstag in 1870 "fear of responsibility is a malaise of our times".
From where I stand, behaving responsibly is having the courage and/or strength of bearing the consequences of one's actions or convictions. To each his/her own and together for all. If you come across someone who thinks the same let me know. That'll make two of us!

Hans-Martin BUHLMANN
VIP sight Shareholders, hmbuhlmann@vip-cg.com, www.VIPsight.EU

Nous recommandons la consultation des contenus sur les AGM, avec une couverture globale, du site www.AGMagenda.com

AVIS D'EXPERT

En dépit des turbulences de cet été, l'Asie représente une part croissante du système financier mondial, et le Peterson Institute vient de publier deux documents qui s'inscrivent dans ce contexte (en anglais). Dans le premier, consacré aux politiques de stabilité financière dans l'Asie émergente, Adam Posen et moi-même tentons de formuler des lignes directrices qui prennent en compte les leçons de la décennie passée en Europe et aux Etats-Unis. Le second, écrit avec Silvia Merler pour un recueil sur la Chine faisant suite à une conférence à laquelle j'avais participé en mai à Pékin, compare les expériences respectives de l'Union européenne et de la Chine en termes de diversification du système financier et de réduction de la prépondérance de l'intermédiation bancaire.
http://veron.typepad.com/main/2015/09/enhancing-financial-stability-in-developing-asia.html
http://veron.typepad.com/main/2015/09/moving-away-from-banks-a-china-eu-comparison.html
Les éditions Oxford University Press ont publié cet été le premier recueil de référence sur l'Union bancaire européenne, auquel j'ai contribué.
Bruegel a fêté cette semaine à Bruxelles ses premiers dix ans d'activité, et a publié à cette occasion une série de témoignages des acteurs clés de son lancement pendant cette période. La contribution de Jean Pisani-Ferry fournit un récit inédit des années de création de

Bruegel entre 2002 et 2005. Ma contribution est également disponible sur ce lien : (http://veron.typepad.com/main/2015/09/celebrating-bruegels-10th-anniversary.html).

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POINT DE VUE ENTREPRISE

G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE REVIEW

SODALI PUBLICATIONS: *As part of continuing efforts to promote market confidence and business integrity, G20 Finance Ministers have endorsed a new set of G20/OECD corporate governance principles. Sodali releases a short note with its views on the recent changes, highlighting the most important aspects to be taken into consideration.* **September 9, 2015.**

The OECD Principles were originally developed by the OECD in 1999 and last updated in 2004. The current review has been carried out under the auspices of the OECD Corporate Governance Committee with all G20 countries invited to participate in the review on an equal footing with the OECD Member countries. The revised Principles maintain many of the recommendations from earlier versions as continuing essential components of an effective corporate governance framework. They also introduce some new issues and bring greater emphasis or additional clarity to others. While some of the Principles may be more appropriate for larger than for smaller companies, it is suggested that policymakers may wish to raise awareness of good corporate governance for all companies, including smaller and unlisted companies. The G20/OECD Principles of Corporate Governance provide recommendations for national policymakers on shareholder rights, executive remuneration, financial disclosure, the behavior of institutional investors and how stock markets should function. The Principles provide guidance through recommendations and annotations across six chapters:

1. Ensuring the basis for an effective corporate governance framework: The chapter emphasizes the role of corporate governance framework in promoting transparent and fair markets, and the efficient allocation of resources. It focuses on the quality and consistency the different elements of regulations that influence corporate governance practices and the division of responsibilities between authorities. In particular, new emphasis is placed on the quality of supervision and enforcement. The chapter also includes a new principle on the role of stock markets in supporting good corporate governance.

2. The rights and equitable treatment of shareholders and key ownership functions: The chapter identifies basic shareholder rights, including the right to information and participation through the shareholder meeting in key company decisions. The chapter also deals with disclosure of control structures, such as different voting rights. New issues in this chapter include the use of information technology at shareholder meetings, the procedures for approval of related party transactions and shareholder participation in decisions on executive remuneration.

3. Institutional investors, stock markets and other intermediaries: This is a new chapter which addresses the need for sound economic incentives throughout the investment chain, with a particular focus on institutional investors acting in a fiduciary capacity. It also highlights the need to disclose and minimize conflicts of interest that may compromise the integrity of proxy advisors, analysts, brokers, rating agencies and others that provide analysis and advice that is relevant to investors. It also contains new principles with respect to cross border listings and the importance of fair and effective price discovery in stock markets.

4. The role of stakeholders in corporate governance: The Principles encourage active co-operation between corporations and stakeholders and underline the importance of recognizing the rights of stakeholders established by law or through mutual agreements. The chapter also supports stakeholders' access to information on a timely and regular basis and their rights to obtain redress for violations of their rights.

5. Disclosure and transparency: The chapter identifies key areas of disclosure, such as the financial and operating results, company objectives, major share ownership, remuneration, related party transactions, risk factors, board members, etc. New issues in this chapter include the recognition of recent trends with respect to items of non-financial information that companies on a voluntary basis may include, for example in their management reports.

6. The responsibilities of the board: The chapter provides guidance with respect to key functions of the board of directors, including the review of corporate strategy, selecting and compensating management, overseeing major corporate acquisitions and divestitures, and ensuring the integrity of the corporation's accounting and financial reporting systems. New issues in this chapter include the role of the board of directors in risk management, tax planning and internal audit. There is also a new principle recommending board training and evaluation and a recommendation on considering the establishment of specialized board committees in areas such as remuneration, audit and risk management. Sound corporate governance is seen as an essential element for promoting capital-market based financing and unlocking investment, which are keys to boosting long-term economic growth.

G20 – OECD Corporate Governance Principles: http://www.oecd.org/daf/ca/Corporate-Governance-PrinciplesENG.pdf

SODALI** is an independent and conflict-free consultancy, exclusively dedicated to advising Boards and the Management of companies on shareholder response and shareholder communication. With a team of more than 50 people, Sodali is located among the following offices: London, New York, Geneva, Madrid, Paris, Rome and its partnerships in Sao Paulo, Tokyo, Mexico City, Beijing, Lima and Johannesburg.. While providing services to companies and not representing dissident shareholders, we are convinced that effective advocacy on behalf of our corporate clients requires us to work within the financial community and to maintain credibility with investment decision-makers and shareholder advocates. For this reason we have positioned our business at the interface of companies and investors, supporting corporate governance best practices, transparency, director accountability, shareholder rights and investor responsibility standards. From this central position Sodali can act as a conduit for information, helping clients assess and mobilize shareholder support for AGMs and other strategic activities. **www.sodali.com

POUR VOTRE INFORMATION

AFG Press release: **Yves Perrier** elected Chairman of the Association Française de la Gestion financière – AFG. We are pleased to announce that **Yves Perrier** was elected Chairman of the AFG during a meeting of the Board of Directors on 19 May. **Eric Pinon** was elected Vice-Chairman. The Board also appointed former Chairman **Paul-Henri de La Porte du Theil** as Honorary Chairman. The meeting included the reappointment of **Strategic Committee members** Yves Perrier, Eric Pinon, Naïm Abou-Jaoudé, Jean-François Boulier, Muriel Faure, Jean-Louis Laurens, Philippe Marchessaux, Andrea Rossi, Daniel Roy, Philippe Setbon and Pascal Voisin. Three additional members Edouard Carmignac, Guillaume Dard and Didier Le Menestrel were added. Yves Perrier said, "Asset management is a key strength within the French financial industry. Having withstood challenging market conditions, the asset management industry is keen to step up its activities in support of both individual and institutional investors as well as increasing its contribution to the country's overall economic development." "The AFG's members, with the association's support, have maintained their momentum and continued to innovate and expand, particularly in export markets, in spite of a significant hardening in the regulatory environment and a domestic market hampered by a tax system that creates disincentives", added Paul-Henri de La Porte du Theil.

Yves Perrier has been a member of the Executive Committee of Crédit Agricole SA since 2003. Since 2007, he has been Director of Asset Management and Financial Services to Institutional Investors at Crédit Agricole SA Group. As such, he is: - Chief Executive of Amundi, whose creation he oversaw in 2010 via the merger of the asset management businesses of Crédit Agricole (CAAM) and Société Générale (SGAM). - Chairman of the Board of Directors of CACEIS, a leading European fund custodian and administrator. Previously at Crédit Agricole Group (2003-2007), he served as Deputy Chief Executive of Calyon (since renamed CACIB) with responsibility for structured finance and brokerage, risk, support functions and the international network. Yves Perrier began his career in audit and consulting (1977-1987). He then joined Société Générale, where he held a number of positions between 1987 and 1999, including Finance Director (1995-1999), before moving to Crédit Lyonnais as a member of its Executive Committee with responsibility for the finance, risk and inspection functions (1999-2003). Yves Perrier also chairs the Institutional Investors Committee at Paris EUROPLACE. Yves Perrier was born in 1954 and is a graduate of the ESSEC business school and a chartered accountant.

Eric Pinon has been Deputy Chief Executive of Acer Finance since 2006. He began his career in 1978 with stockbroker Michel Puget, where he was made a corporate officer in 1985. After completing a master's degree in management at Sorbonne Paris I University and starting out in financial analysis, he was given responsibility for the MATIF (futures market) business and made director of interest rate management for institutional clients. He remained a senior executive at the firm until it merged with the Barclays group in late 1989. In 1989, he formed Europe Egide Finance, which in 1990 went on to be one of the first firms authorised by France's securities and exchange commission, the COB. At the same time, he served as Vice-Chairman of the AFG from 1997 to 2003 and chaired its Entrepreneurial Asset Management Firms Committee. He ran Europe Egide Finance until its sale to KBL France (Krediet Bank group) in 2003. He was then a member of KBL France's Executive Board from 2003 to 2004, after which he served on its Supervisory Board in 2005. He joined Acer Finance in early 2006 as a partner and a senior executive. As well as overseeing relations with institutional and private clients and communication, he is currently responsible for the company's compliance and internal control functions. He is a member of the AFG's Board of Directors and has once again chaired the association's Entrepreneurial Asset Management Firms Committee since 2013. He is also a member of the AMF's Consultative Commission on Asset Management and Institutional Investors.

By appointing him Honorary Chairman, the Board has paid tribute to the effective action led by **Paul Henri de La Porte du Theil**. During his two mandates as Chairman, he made a significant contribution to raising awareness of the role of asset management in financing the real economy. He also strengthened the AFG's European and international activities through lobbying and promotion to support the international development of French asset management firms. Paul-Henri de La Porte du Theil has spent most of his career with Crédit Agricole. He joined the asset management in 1991 and served as Deputy Chief Executive of Crédit Agricole Asset Management (now Amundi) and Vice-Chairman of the AFG from 1995 before being appointed Chairman of the AFG in May 2009. Paul-Henri de La Porte du Theil was born in 1947. He is a graduate of the Ecole Nationale Supérieure de l'Aéronautique, has a master's degree in economics and followed Stanford University's Executive Program. The Association Française de la Gestion Financière (French Asset Management Association – AFG) represents the French asset management industry for both collective and discretionary portfolio management. The industry manages total assets in excess of €3,400 billion, with €1,700 billion of this amount in French funds and €1,700 billion in discretionary portfolios and foreign funds. This press release May 19, 2015 is available at **www.afg.asso.fr**. **Contact**: Dominique Pignot, Communications Director, d.pignot@afg.asso.fr

POUR VOTRE INFORMATION

- **AFGE : Le CA réuni le 18/9/2015 a élu son Bureau executif : Président J-A Massie ; SG N.Tangy et SG adjoint Cl.Deflou Caron ; Trésorier R. Rodgold et Trésorier adjoint M. Modé ; Conseillers du Président Fr. Basset-Chercot et B.Butori. Les autres membres du CA sont Mme J.Fanguinoveny ; MM M.Cojean, K.Gonencer, P.Leclerc, M.Roux, M. Simon-Blavier et H.Rachdi rédacteur en chef de la Lettre de l'AFGE.** Le colloque annuel serait prévu fin janvier 2016
- ***CapitalCom*** *et le lien public ont organisé les 2eme Assises de la performance sociale le 24/06/2015, Espace Cardin Paris ; les exposés de grande qualité et les débats de brillants orateurs sur le thème : la performance sociale contribuera-t-elle au capitalisme responsable ? sont disponibles sur www.capitalcom.fr (pacte social).*
- *L'**Af2i** a publié le 01/07/2015 la 2eme édition du « Guide Af2i du Capital Investissement » réalisé cette fois-ci en collaboration avec l'AFIC (90 pages) : Présentation du capital-investissement en France, la décision d'allocation, la réalisation et le suivi… avec en annexes les principes d'investissement responsable UN PRI et la Charte des investisseurs pour la croissance.*
- ***Panorama institutionnel France 2015** : taille et structure du marché Institutionnel français, les ressources collectées, l'épargne salariale, les activités d'assurance…et comparisons internationales (38 pages).*
- *« **L'Enquête Af2i 2015** » est le résultat d'un considérable travail de recherche de l'association d'analyse des sources d'information et de propositions ; une remarquable cartographie du marché Institutionnel français par type d'engagement, une analyse des perspectives 2015 ! (101 pages). Contact : af2i@af2i.org, www.af2i.org.*
- ***Décideurs** vient de publier le guide 2015 du capital-investissement (Fonds-Dirigeants-LPs-Conseils) ; www.magazine-decideurs.com.*
- ***Finyear** a mis en ligne un livre blanc « Quelles actions mettre en place pour réduire les risques de fraude sur les paiements ? ». (télécharger gratuitement : http://www.finyear.com/forms/Quelles-actions-mettre-en-place-pour-reduire-les-risques-de-fraude-sur-les-paiements_f68.html).*
- ***Valeurs Vertes**, le magazine du développement durable N°135 été 2015 est paru ; contact@valeursvertes.com.*
- *La Revue Analyse Financière N°56 (juillet 2015) éditée par la SFAF peut être commandée sur le site : www.sfaf.com; mhenaff@sfaf.com*
- ***ALSTOM GE** : la commission européenne donne son feu vert au rachat d'Alstom par GE en échange de contreparties sans importance et d'un ultime cadeau de 300 millions de dollars décidé par le PDG d'Alstom, sans consultation des actionnaires.*
- ***"Alstom, un scandale d'état"** : l'enquête de **Jean Michel Quatrepoint** (Fayard, septembre 2015, 17 euros) pose bien le problème. Un état occupé par des jeunes ambitieux sans scrupules, plongés dans une guerre économique et judiciaire extraterritoriale dont ils ne savent absolument rien, des dirigeants obscurs et déconnectés des opérations, un board asservi et des actionnaires sans aucun pouvoir.*

AGENDA

- ***EIFR** seminar "Equity-based crowdfinding: economic and regulatory challenges ahead" 28/09/2015 8h30-13h salon Etoile St Honoré.*
- ***CEPS** conference 15/10/2015: Bruxelles 1 place du Congrès "Accelerating the Transition to a Green Economy in Europe…"; info@ceps.eu*
- *16th meeting of the Contact Persons for the **European Globalization Adjustement Fund** (EGF), Brussels 21/10/2015. Crown Plazza Hotel, Rue Gineste 3. http://ec.europa.eu*
- ***OECD** meeting Hanoi, 16-17 november 2015 "The Asia Network on Governance of State Owned Entreprises" contacts : anne.nestour@oecd.org; ynhee.kin@oecd.org*
- ***Harvard Business School, Executive Education** : "Corporate Level Strategy", HBS Campus 13-18 March 2016; contact : lcimaglia@hbs.edu*
- ***IFG - Executive Education** propose des programmes diplômants MBA/MASTER 100% online ou en présentiel qui répondent à votre projet professionnel. Contact : diplomants@groupe-ifg.fr; www.groupe-ifg.fr*
- *La Journée du Gouvernement d'Entreprise session 2015 aura lieu le 3/12/2015 du 9h à 19h à la Faculté de Droit et Science Politique, Université **Lumière Lyon 2** en collaboration avec l'AFGE représentée par son président, l'APIA et le directeur du Master J-L Navarro.*
- ***Ethos** organise une conférence le 5/10/2015 à Lausanne sur les entreprises familiales cotées : Comment concilier les interêts familiaux avec ceux des actionnaires minoritaires. event@ethosacademie.ch.*

FOCUS

Mission

The world is changing rapidly. While our market-based economy has emerged as the most efficient system for allocating scarce economic resources, it is giving rise to a growing array of social inequalities, environmental impacts and negative externalities which are affecting companies. Unprecedented environmental and social pressures driven by food, water and energy security, access to natural resources, climate change, human rights, supply chain labour standards and ageing populations have become material issues for business and the corporate world. The impact of poor corporate governance practices on shareholder value, accentuated by the global financial crisis, has also lifted issues such as transparency, corruption, board structure, shareholder rights, business ethics, risk management and executive compensation to the top of the investor agenda.

Responsible investment is an approach to investment that explicitly acknowledges the relevance to the investor of environmental, social and governance (ESG) factors, and the long-term health and stability of the market as a whole. It recognises that the generation of long-term sustainable returns is dependent on stable, well-functioning and well governed social, environmental and economic systems. It is driven by a growing recognition in the financial community that effective research, analysis and evaluation of ESG issues is a fundamental part of assessing the value and performance of an investment over the medium and longer term, and that this analysis should inform asset allocation, stock selection, portfolio construction, shareholder engagement and voting. Responsible investment requires investors and companies to take a wider view, acknowledging the full spectrum of risks and opportunities facing them, in order to allocate capital in a manner that is aligned with the short and long-term interests of their clients and beneficiaries.

An evolving industry

Mounting evidence of the financial materiality of ESG issues, alongside growing demands from regulators, clients and beneficiaries for more sustainable approaches to investment, are among the key drivers behind the adoption of responsible investment practices worldwide. Increasingly, investors concerned about the impact of short-termism within investment research, asset allocation, and performance monitoring recognise that integrating ESG issues into both investment analysis and stewardship practices forms part of their fiduciary duty to clients and beneficiaries and want to see their portfolios managed in a way that systematically assesses drivers of risk and return over longer timeframes.

Principles

As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that environmental, social, and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time). We also recognize that applying these Principles may better align investors with broader objectives of society. Therefore, where consistent with our fiduciary responsibilities, we commit to the following:

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

PRI Initiative

The **United Nations**-supported Principles for Responsible Investment (PRI) Initiative is an international network of investors working together to put the six Principles for Responsible Investment into practice. Its goal is to understand the implications of sustainability for investors and support signatories to incorporate these issues into their investment decision making and ownership practices. In implementing the Principles, signatories contribute to the development of a more sustainable global financial system.

The Principles are voluntary and aspirational. They offer a menu of possible actions for incorporating ESG issues into investment practices across asset classes. Responsible investment is a process that must be tailored to fit each organization's investment strategy, approach and resources. The Principles are designed to be compatible with the investment styles of large, diversified, institutional investors that operate within a traditional fiduciary framework. The PRI Initiative has quickly become the leading global network for investors to publicly demonstrate their commitment to responsible investment, to collaborate and learn with their peers about the financial and investment implications of ESG issues, and to incorporate these factors into their investment decision making and ownership practices.

Last Publications

Fiduciary Duty in the 21st Century, Report on Progress 2015, Model Guidance on Reporting ESG Information to Investors September 2015
Annual Report 2015, Human rights and the extractive industry: Why, who and how to engage July 2015
Private Sector Investment and Sustainable Development January 2015

Executive team: **Fiona Reynolds**, Managing Director

Contact: PRI Executive: 5th Floor, 25 Camperdown Street London, E1 8DZ, United Kingdom; www.unpri.org

COP21/CMP11 : Pour un accord universel sur le climat : Paris, November 30-December 11, 2015

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La lettre de l'AFGE est réservée aux adhérents et aux sympathisants de l'association. Elle est disponible sur notre site Internet.
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