Institutional Investor FORUMS

9TH ANNUAL

Evolving Fiduciary Obligations of Institutional Investors

JUNE 25-26, 2018 | HYATT REGENCY SAVANNAH | SAVANNAH, GA

The End of an Era. The Beginning of a New, Different One?

We are living through chaotic times. The established order – whether you ascribed to it or not – is being redrawn and a new reality is being built. Does the current environment argue for a new set of priorities and objectives, or does it reaffirm exactly ones? Does the landscape necessitate different strategies and processes?

Recent years have seen the historical, traditional supporters of active engagement and responsible investing – the public plans – take a relative step back from the barricades while new, powerful players – the asset management firms – begin to involve themselves in these issues ranging from taking a more active role in influencing firms' behavior to resorting to legal actions when merited. Even some hedge funds are beginning to assess the merits of asset recovery. Some of this shift can be related back to the seminal Morrison decision, perhaps some has to do with the largely positive performance of the equity markets recently, but even more might be attributed to a realization among the entire asset management community that the benefits of being an active owner extend beyond the desire to do good to very practical considerations like market demand forces and market share, loss recovery, and very real regulatory and compliance concerns.

This systemic shift is promising in that it brings to bear the influence of generally well-resourced, highly adept powerhouse firms managing literally trillions of dollars in equity assets worldwide – and the potential influence which comes with those kinds of numbers' but it also changes the tenor of the conversation somewhat.

This year's agenda reflects these changes in a number of ways. Not only are we in a different city at a different point in the calendar, but the discussion at this year's meeting is going to – to the best of our ability – represent the current state of flux within the broadening community of legal and investment professionals focused on shareholder engagement.

In this ninth year now, in conjunction with co-host Kessler Topaz Meltzer & Check LLP, and with the essential input of an Advisory Board of your peers, we will offer a thorough overview of the landscape within which legal teams at both public plans and at asset management firms are operating to fulfill their obligations as fiduciaries and active shareholders. And in turn, how they may better leverage strategies and achieve objectives within this environment to meet both their individual as well as the community's shared objectives.

Emphasizing real-world examples of how institutional shareholders are engaging with the companies they invest in, this event will review the most crucial legal decisions, regulatory actions, and developments legal decision-makers should be aware of. So we very much look forward to greeting you in Savannah this June.

Advisory Board

Jim O'Connor, *Managing U.S. Counsel,* **Aberdeen Asset Management**
Brian J. Bartow, *General Counsel,* **CalSTRS**
Michael D. Herrera, *Senior Staff Counsel,* **Los Angeles County Employees Retirement Association**
Margaret Daun, *Milwaukee County Corporate Counsel,* **Milwaukee County Employees' Retirement System**
Jennifer J. Peet, *Director of Legal Affairs,* **Oregon State Treasury**
Robert Gaumer, *General Counsel,* **Sacramento County Employees' Retirement System**
Catherine E. LaMarr, *General Counsel,* **State of Connecticut Retirement Plans & Trust Fund**

Brian J. Goodman, *Legal Affairs and Compliance Coordinator,* **Virginia Retirement System**
Gerald Lins, *General Counsel,* **Voya Investment Management**

Preliminary Program as of February 26

Monday, June 25, 2018

1:00 to 1:45 pm
Registration and Lunch
Scarborough Foyer 1

1:45 pm
Welcome Remarks
Scarborough 1-2

App Tutorial
Kip Miller, *Client Services Director,* **Institutional Investor Forums**

Everything you, as an attendee, need to know about the Forum can be found on our app, including program details, speaker biographies, information on other attendees, white papers, and access to the speaker presentations we have been authorized to make available.

Darren Check, *Esq., Partner*, **Kessler Topaz Meltzer & Check, LLP**

Conference Moderator:

Harvey Shapiro, *Senior Advisor*, **Institutional Investor**

2:00 pm
Panel Discussion
Pressures From Within and Pressures From Without: Are Legal Issues Changing Your Fund's Investment Behavior?
Scarborough 1-2

Moderator:

To be invited

Panelists:

Case W. Fell, CFA, CAIA, CIPM, *Chief Investment Officer*, **New York State Nurses Association Pension Plan & Benefits Fund** (Pending confirmation)

Additional panelists to be determined

There was a time when investment decisions were made in a relative vacuum except for considerations about which opportunities would provide the best risk-adjusted return (for managers and allocators both) and which strategies might provide a comparative advantage (for management firms). Now the formula is much more nuanced with exogenous factors ranging from pressures to include or exclude specific investment opportunities to an over-riding imperative to avoid headline risk and at all costs, avoid getting sued. How are both allocators and managers reacting to this new landscape? Is there opportunity within this new reality, or just a more and more constrained opportunity set?

- As allocators invest in more complex fund structures, how has this changed the identification and due diligence of managers?

2:45 pm
Panel Discussion

Redefining "Fiduciary": Ramifications for the Asset Management Industry and for Engaged Investors

Scarborough 1-2

Moderated by:

To be invited

Panelists:

Jen Suellentrop, *Vice President*, *Associate General Counsel*, **Fidelity Investments** (Pending confirmation)

Additional panelists to be determined

- Fiduciary Rule and MiFID II in the context of the rise of non-institutional (retail, mass affluent, and HNW) investors
- How are asset managers responding to the pressures from above and below?
- What will be the impact of ABLE Act programs under §529 of the IRC?
- As federal regulators (potentially temporarily) take a step back from advancing fiduciary issues and several states move to fill the vacuum, what will be the effect on institutions doing business in many parts of the country?
- How do you train your staff to keep up with the evolution of "fiduciary", and who needs to know what?

3:30 pm

Coffee Break

Scarborough Foyer 1

4:00 pm

Workshop Series I

Workshop A

Cyber-Security Inside and Outside Your Plan: What Controls and Processes Do Your Managers and Co-Parties Need to Have in Place?

Plimsoll

Workshop Leaders:

Catherine E. LaMarr, *General Counsel*, **Office of the Treasurer, State of Connecticut Retirement Plans & Trust Fund**

Margaret Haering, Counsel & Assistant Director, Healthcare Policy & Benefit Services, **State of Connecticut Retirement Plans & Trust Fund** (invited)

- How much information do trustees need to know about the specific controls and processes you have in place?
- What are vendors' (including investment managers and custodians) doing to update their protection and protocols?
- What issues should be addressed specifically within service agreements?

Workshop B

ESG as an Investment Risk Mitigator: A Concept Driven By Supply or By Demand?

Savannah

Workshop leaders to be identified

Currently there is an increasing volume of discussion about the idea that a focus on "impact" or ESG actually correlates with better risk mitigation. It's normal that different people would have different opinions on this, so how do its proponents propose that this idea be quantitatively assessed and numerically reported?

4:45 pm

Case Study

What the Successful Resolution of the Facebook Case Means for Engaged Shareholders

Scarborough 1-2

Presented by:

Senior Representative, **Kessler Topaz Meltzer & Check, LLP**

Recently, a large pension fund recently won a legal battle to stop Facebook founder and CEO Mark Zuckerberg from diluting shareholder rights, which could have cost shareholders up to $10 billion. This case study will provide a quick review of the salient facts and then focus on what this legal action means for active shareholders globally.

Panel Discussion

General Counsels' Panel

Scarborough 1-2

Panelists:

John Furst, *Deputy General Counsel*, **Lord Abbett & Co.** (Proposed)

Ilyse Sisolak, *General Counsel*, **New York City Employee Retirement System**

Gerald Lins, *General Counsel,* **Voya Investment Management**

Additional panelists to be invited

For several years now at the European equivalent of this meeting, we have developed a panel comprised entirely of general counsels with the mandate to talk about 4-5 of the key issues they are facing at their firms – and by extension our attendees are likely to be grappling with as well. The discussion is wide-ranging by design and is determined on a conference call among the panelists approximately two weeks in advance of the Forum to ensure that the information discussed is current.

6:15 pm

Cocktail Reception

River Lounge

7:00 pm

Dinner

Scarborough 5

Tuesday, June 26, 2018

8:00 am

Breakfast Discussion Tables

Plimsoll and Savannah

At peer-moderated tables of 8-10 participants, delegates will share their opinions and compare notes on a number of important issues identified by Advisory Board members as worthy of discussion. Delegates will be asked to contribute to the overall discussion with the intention of sharing information and learning from others' experiences.

8:45 am

Panel Discussion

Have We Begun to Understand the Investment, Legal and Compliance Ramifications of Data-Driven Investing?

Scarborough 1-2

Moderator

Brian J. Bartow, *General Counsel,* **CalSTRS**

Panelists:

Brian LaVictoire, *Deputy General Counsel for Investments & Compliance*, **Municipal Employees' Retirement System of Michigan** (Proposed)

Additional panelists to be invited

Data-driven investing (closely related to "machine learning" and artificial intelligence discussions) are one of the biggest influences on asset and wealth management this year, and likely to continue to dramatically alter the way firms manage money. But by its very nature, these strategies can present a host of issues, primarily privacy-related ones but also including cyber-security, etc. It's a good story: Make better investment choices and earn better risk-adjusted returns with complex, systematic, sometimes algorithm-based decisions. But have institutions – both allocators and managers – begun to understand the potential consequences?

9:30 am

Workshop Series II

Workshop C

Why Hasn't Tax-Shifting and Other Tax Issues Become a Bigger Governance Concern for US Investing Institutions?

Plimsoll

- Are institutions somehow encouraging the maximization of returns from foreign investments by allowing the avoidance of recovery of withholding taxes in foreign domiciles?
- Are managers obtaining the necessary information on the return of withholding taxes paid? Should this information be available to allocators?
- Should investors push for the contractual obligation for commercially reasonable steps to avoid withholding for tax-exempt partners?

Workshop D

To Be Determined

Savannah

10:15 am

Coffee Break

Scarborough Foyer 1

10:30 am

Panel Discussion

Case Studies Series: Grappling with the Growing Array of Obstacles in Pursuing non-US Actions Post-Morrison

Scarborough 1-2

Panelists:

Michael D. Herrera, *Senior Staff Counsel,* **Los Angeles County Employees Retirement Association**

Additional panelists to be invited

One of the trends mentioned in the introduction to this year's program has to do with more and more public plans shying away from legal actions. This trend is especially poignant when it comes to actions outside the U.S. Will asset management firms – theoretically better staffed and resourced to handle these increasingly complicated, more expensive cases – fill the breach? Or will the Morrison Decision have a lasting dampening effect on active shareholders' interest in and ability to pursue recovery outside the U.S.?

11:15 am

Guest Presentation

Scarborough 1-2

12:00 pm
Lunch

Plimsoll

1:00 pm
Forum Concludes