

## **Corporate Governance – Law and Business**

New York University

Syllabus

BSPA-GB.3318.30/LAW-LW.10042.001

Term: Spring 2026

Dates: February 3- April 28

Meeting Times: Tuesday, 4:55-7:55pm

Classroom: Kaufman Management Center- Room 5-140 **Class will meet on Law School Legislative Day**

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### **Course Objectives/Learning Outcomes:**

This section of Corporate Governance may include students from both the Stern School of Business and the NYU School of Law. The objective is to facilitate professional interaction and joint work between students from both schools.

The emphasis in this course is on the interdisciplinary legal and business aspects of corporate governance. The dominance of the corporation in the modern economy has brought enormous challenges for civil society and for the boards of directors charged with overseeing the corporation's affairs. The purpose of this course is to examine the role of the corporation in society; the evolution of US corporate governance standards; the structure, makeup, priorities, and culture of boards; shareholder and stakeholder engagement, including shareholder activism; global governance; and corporate citizenship.

This course strives to support and cultivate diversity of thought, perspectives, and experiences. The intent is to present materials and activities that will challenge your current perspectives with a goal of understanding how others might see situations differently. By participating in this course, it is the expectation that everyone commits to making this an inclusive learning environment for all.

## Course Description:

This course focuses primarily on for-profit, publicly traded corporations. Students are challenged to understand the system and structure in which corporations' function and to think critically about the framework for effective corporate governance. This will include an understanding of the structural relationships determining authority and responsibility for the corporation and their associated complexities. Students will be assigned foundational readings and cases associated with each topic and will be asked to examine issues from both legal and business perspectives.

## Readings:

Readings are available as follows:

- NYU Brightspace site under "Resources"
- Required Digital Course Pack which may be purchased at the NYU Bookstore using the following instructions:
  - a. Go to the NYU Bookstore website: [www.shopnyu.com](http://www.shopnyu.com)
  - b. Towards the top, click on "Textbooks."
  - c. Search either by course or by using your NYU ID number.
  - d. Select items and proceed to checkout.
  - e. After completing your order, you will receive an email with your access code and instructions regarding accessing the Digital Course pack.

## Grading:

The weights for the student's overall grade are:

- |                             |     |
|-----------------------------|-----|
| - Class participation       | 33% |
| - Two short papers          | 33% |
| - Team project/presentation | 33% |

## Class participation:

Your obligation in this course is to attend all classes and prepare for discussion by thorough reading and analysis of the assigned material before each session. Readings and case discussions are an essential part of the course. All students are responsible for being prepared to discuss all the study questions before coming to class. The instructor will ask students to present the assigned materials as a basis for discussion. **Merely being in class is not evidence of participation; you will need to be actively engaged in a manner that reflects advanced preparation.**

## Short Papers:

Each student should prepare a written analysis of one study question from two different classes. The course requirement is to complete two short papers during the semester. The papers must be submitted on NYU Classes before the class addresses the topic in class. These analyses should be 5

pages in length (typed and double-spaced). The objective of the papers is to demonstrate mastery of the course concepts by integrating only the course reading material, as is appropriate, to your analysis. The papers will be evaluated based upon the systematic and thorough application of the relevant concepts addressed in the readings. The papers are due on or before Sessions 4, and 8.

### **Team Project/Presentation:**

On the first or second day of class each student will be assigned to a team and a case for presentation later in the semester. The teams will be asked to prepare a 35–40-minute presentation of the case. The presentation should integrate the themes addressed throughout the semester and include a discussion of the relevant legal and business issues, including market and industry context. The company’s financial position, shareholders, and market value, as impacted by the issues covered, should be addressed. The presentation should address not only the situation as it existed but an analysis of alternative approaches, if appropriate, that may have yielded a preferred result. **Integrating the course material and demonstrating mastery of the course concepts is essential.** After the presentation, the team is expected to lead the class in a 10- 15-minute discussion. The team is required to submit a “hard copy” of the presentation to the professor at the beginning of the discussion and **EACH member of the team is REQUIRED to submit a confidential team evaluation at the conclusion of the presentation.** The cases for presentation are relatively well known and therefore information is readily available. Options surrounding the presentation format will be discussed in greater detail the first day of class.

**Please see other important course information at the end of the syllabus.**

### **Session # 1:**

The role and purpose of the corporation; the evolution of U.S. corporate governance; Board Structure; Fiduciary duties

### **Session # 1 Readings:**

#### Foundational:

1. The American Corporation, Ralph Gomory & Richard Sylla
2. Our Schizophrenic Conception of the Business Corporation, William T. Allen, 14 Cardozo L. Rev. 261 (1992)
3. Directors Who Do Not Direct, William O. Douglas, 47 Harvard Law Review 1305 (1934)
4. The Error at the Heart of Corporate Leadership, Joseph L. Bower and Lynn S. Paine, HBR May-June 2017
5. Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans’, Business Roundtable, August 19, 2019

6. Stakeholders incorporated: Can capitalism change if company charters stay the same? Sarah Murray, Financial Times, August 5, 2021
7. The Battle Over Who Makes the Rules for US Companies, Sujeet Indap, Financial Times, August 6, 2024

**Session # 1 Questions:**

1. What are we seeking to achieve in corporate governance? How should we define success?
2. What are the foundational challenges being addressed in the readings over the nearly 100-year span? What were Douglas' concerns regarding corporate governance and how do they compare/contrast with the governance challenges raised by Allen, Gomory & Sylla, and Bower and Paine?

**Session # 2:**

Corporate Purpose; Dual Class Structure; Market for Corporate Control

**Session # 2 Readings:**

Foundational:

1. Unrealized Potential: Misconceptions About Corporate Purpose and New Opportunities for Business Education, Miguel Padro, The Aspen Institute Business & Society Program, May 28, 2014
2. Why We Should Stop Teaching Dodge V. Ford, Lynn A. Stout, 3 Va. L. & Bus. Rev. 163 (2008)
3. Unequal Shares, James Surowiecki, The New Yorker, May 28, 2012
4. Shareholders Vote with Their Dollars to Have Less of a Say, Steven Davidoff Solomon, NY Times, November 4, 2015
5. Tech Founders Want IPO Riches Without Those Pesky Shareholders, Maureen Farrell, WSJ, April 3, 2017
6. Analysis: Differentiated Voting Rights in Europe, January 28, 2018, Governance Weekly
7. Why Europe is the next battleground for investor control, Helen Thomas, Financial Times, March 1, 2023
8. Multiple Voting Shares in Europe- A Comparative Law and Economic Analysis, Harvard Law School Forum on Corporate Governance, Klaus J. Hopt and Susanne Kalss, July 31, 2024
9. Delaware Puts Its Corporate Law Dominance at Risk, Directors & Boards, August 26, 2024

Cases:

10. Veridian: Putting A Value on Values, Rakesh Khurana, Joel Podolny and Jaan Elias, www.hbr.org HBS 9-406-028
11. Letter From Mark Zuckerberg, Facebook Prospectus 2012, S1, pages 67-70
12. Have America's Industrial Giants Forgotten What They are for? Andrew Hill, Financial Times, February 4, 2025

Session # 2 Questions:

1. How do Stout's views on the concept of the business corporation impact the board of directors' decision making in the Veridian case?
2. How does values-based management (Veridian and Facebook) relate to shareholder interest and corporate purpose? What are the implications of dual class shares on these issues and the functioning of the board of directors?

**Session # 3:**

What is the current structure, makeup, priorities, and culture of corporate boards? Best Practices in Constructing a Board of Directors; Independence; Committee requirements

**Session # 3 Readings:**

Foundational:

1. Long-Term Investors Have a Duty to Bring Back the Staggered Board, Cleary M&A Corporate Governance Watch, June 5, 2018
2. NYSE Listed Company Manual Section 303A.01-.10 excerpts
3. Commonsense Corporate Governance Principles
4. Corporate Governance: Director Tenure Remains a Focus of Investors and Activists, David A. Katz and Laura A. McIntosh, New York Law Journal, July 27, 2016

Cases:

5. Legal Parameters of Director's Oversight Duties (these cases are to be presented by law school student volunteers, if available- the presentations will address the background of the case, findings of the court and relevance to governance in no more than 5-10 minutes per case):

- Caremark International Inc. Derivative Litigation, In re Caremark Int'l, 698 A.2d 959 (Del. Ch. 1996).
- Marchand v. Barnhill, 212A.3d 805 (Del. 2019).

6. A Director's Duty of Oversight after *Marchand* in "Caremark" Case, Gregory A. Market, Daphne Morduchowitz, and Matthew C. Catalano, Harvard Law School Forum on Corporate Governance, January 23, 2022

7. Tyco International: Corporate Governance, Rakesh Khurana and James Weber, [www.hbr.org](http://www.hbr.org) HBS 9-408-059

#### Session # 3 Questions:

1. How do independence criteria, tenure, and staggered board elections impact the functioning of the board and their oversight duties?
2. How would you assess Breen's decision, in Tyco, to completely replace his board of directors? What principles guided his new board creation strategy? Do you agree/disagree and why?

#### Session # 4:

Role of Institutional Investors/Stewardship and Engagement/ESG

#### Session # 4 Readings:

##### Foundational:

1. BlackRock Investment Stewardship Global Principles, January 2025
2. Investor Stewardship Group: 1. The Stewardship Principles 2. The Corporate Governance Principles for Listed Companies
3. 'Investing for Good' Meets the Law, Max M. Schanzenbach and Robert H. Sitkoff, WSJ, December 9, 2018
4. Socially Conscious ETFs Have Some Baffling Holes, Eric Balchunas, January 27, 2020, Bloomberg

5. ESG is Beyond Redemption: May it RIP. Aswath Damodaran, Financial Times, October 23, 2023
6. How Robust Is Your Climate Governance, Lynn S. Paine and Suraj Srinivasan, Harvard Business Review, November-December 2024

Cases:

7. The Thorny Task of Advocating Good Corporate Behavior, Steven Davidoff Solomon, NY Times, March 24, 2015
8. Scarlet Letters, Hester M. Peirce, Corporate Board Member, Fourth Quarter 2019
9. Overselling Sustainability Reporting, Kenneth P. Pucker, Harvard Business Review, May-June 2021
10. ESG Ratings, A Compass Without Direction, David F. Larcker, Lukasz Pomorski, Brian Tayan and Edward M. Watts, Stanford Closer Look Series, August 2, 2022
11. Moving Beyond ESG, Robert G. Eccles, Harvard Business Review, September-October 2024
12. The Climate Crisis is Bigger Than Any News Cycle, Ryan Geller, New York Times, December 3, 2024

Session # 4 Questions:

1. Currently, beyond regulation, stewardship principles, listing standards, index compositions, and ratings firms are among the tools being used to address environmental and social issues. How would you advise the board to consider these issues? Is this consistent with their fiduciary duties? If so, in what way?
2. What are the fiduciary standards for institutional investors? How do you think they integrate the consideration of ESG in that framework? What impact does that or should that have in corporate behavior?

**Session # 5:**

Risk Management/Corporate Global Citizenship/ Business Speaking on Social Issues:

**Session # 5 Readings:**

### Foundational:

1. Risk Management and the Board of Directors, Wachtell, Lipton, Rosen & Katz, March 2024
2. Guiding Principles on Business and Human Rights, 2011, Section 2- Corporate Responsibility to Respect Human Rights
3. Legal teams rally to defend the rule of law, Special Report FT General Counsel 2017, Lindsay Fortado, June 20, 2017
4. When Should Business Take a Stand? Sarah Murray, Financial Times, March 8, 2022
5. How Companies Should Weigh in on a Controversy, A Better Approach to Stakeholder Management, David M. Bersoff, Sandra J. Sucher, and Peter Tufano, Harvard Business Review, March-April 2024

### Cases:

6. Levi Strauss bets moral mission can survive public markets, Andrew Edgecliffe-Johnson, Financial Times, March 30, 2020
7. Executive Powers, David Gelles, NY Times, August 20, 2017
8. Glaxo to Curb Drugstore Staples in Russia as It Walks Ethical Tightrope, Denise Roland, WSJ, April 6, 2022

### Session # 5 Questions:

1. Drawing from the readings, create a set of principles that a corporation could apply in defining how, when, and why a business should take a stand on social issues. Who should represent the company in such circumstances and why? What is the role of the board, considering their risk oversight obligations?
2. Apply a set of principles to the cases listed above to guide a corporation in responding to social issues. How well do the principles work in practice? Where do they fall short?

### **Session # 6:**

Diversity, Equity & Inclusion; Tone at the Top/CEO Oversight/Compensation

**Session #6 Readings: Note**- there are two sections in this class- DEI and CEO Oversight

Diversity, Equity & Inclusion:

Foundational:

1. US board composition: male, stale, and frail? Stephen Foley and Jennifer Bissel, Financial Times, August 16, 2016
2. The Multiplicity of Regulatory Responses to Remedy the Gender Imbalance on Company Boards, Linda Senden, Utrecht Law Review Volume 10, Issue 5, December 2014
3. Executive Summary, Paul Hastings 2018
4. Corporate Governance Update: Solving the Board Composition Puzzle, New York Law Journal, May 25, 2022
5. More Women are Getting into Corporate Boards. Good. The Economist, March 7, 2024
6. Proxy Advisors and Institutional Shareholders Revise Voting Guidelines on Board Diversity, Debevoise & Plimpton, February 24, 2025
7. Fearing Trump, Wall Street Sounds a Retreat on Diversity Efforts, Rob Copeland, NY Times, February 11, 2025

Cases:

8. What Google Learned from Its Quest to Build the Perfect Team, Charles Duhigg, February 25, 2016, NY Times
9. The Bottom-Line On-Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards, Lisa M. Fairfax, 2005 Wis. L. Rev. 795 (**Focus on Part 3**)

CEO Oversight/Compensation: Tone at the Top, Questionable Behavior:

Foundational:

1. Scoundrels in the C-Suite: How Should the Board Respond When A CEO's Bad Behavior Makes the News, David F. Larcker and Brian Tayan, May 10, 2016, Stanford Closer Look Series
2. How to Pay Executives in the Age of Stakeholder Capitalism, Sarah Murray, Financial Times, December 14, 2022

Cases:

3. Boeing CEO Resigns Over Affair with Subordinate, Renae Merle

Session # 6 Questions:

1. Reflecting on the readings above, in creating a board of directors how important is the issue of diversity and in what ways? Is the “business case” important to the issue? How would you advise a BOD to consider diversity?
2. Is mandating diversity on a Board of Directors desirable from a company and/or societal standpoint? Consider the US position contrasted with other practices around the globe.
3. What is the duty of the board of directors to pursue reports of misconduct, particularly in cases where behavior is not explicitly illegal, and shareholders have suffered no apparent loss? When should such conduct merit board attention and what steps should a board take in addressing it?
4. What objectives and principles would inform your decision about CEO compensation? How would you suggest a board structure such compensation?

**Session #7:**

International Corporate Governance- Global Trends/Challenges

**Session # 7 Readings:**

Foundational:

1. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct 2023, Part 1: Pages 9-40 Text **Without Commentary**
2. OECD Corporate Governance Factbook 2023, Executive Summary and Global Markets, Corporate Ownership and Sustainability, pages 9-26 (Omit Box 1.1, Sections 1.4 and 1.7)
3. Principles for Responsible Investment
4. UN Sustainable Development Goals
5. EU Finalizes ESG Reporting Rules with International Impacts, Thibault Meynier, Sarah H. Miskhkin and Matthew Triggs, Sullivan & Cromwell, Harvard Law School Forum on Corporate Governance, January 30, 2023

6. Supply Chain Due Diligence Obligations in Germany, France and the EU: An Overview, Amelie Champsaur, Mirko von Bieberstein, Guillaume de Rancourt, Sebastian Kummler, Camille Kerneves, Andreas Wildner, and Marc Christopher Baldauf, Compliance and Enforcement, March 20, 2024

Cases:

7. Global Corporate Governance Trends for 2023, Harvard Law School Forum on Corporate Governance, Posted by Richard Fields, and Rusty O'Kelley, Russell Reynolds Associates, March 10, 2023
8. Global Corporate Governance Trends for 2024, Harvard Law School Forum on Corporate Governance, Posted by Richard Fields, Rusty O'Kelley, and Melissa Martin, Russell Reynolds Associates, March 6, 2024
9. Tata: Leadership with Trust, Oana Branzei, Richard Ivey School of Business, The University of Western Ontario, 910M25
10. A Non-Profit Motive Need Not Be Bad for Business, Financial Times, March 31, 2024

Session # 7 Questions:

1. Contrast the US system of governance with global trends. Would you recommend the US adopt any proposals and, if so, which ones and why?
2. Tata executives are to create a ten-year strategic plan. Given the evolving global environmental and social responsibilities addressed in the case, what changes would you recommend for Tata and why?

**Session #8:**

Shareholder Activism; The role of Proxy Advisors and Proxy Voting

**Session # 8 Readings:**

Foundational:

1. The Big Thumb on the Scale- An Overview of the Proxy Advisory Industry, Stanford Closer Look Series, James R. Copland, David Larcker, and Brian Tayan, May 30, 2018

2. “Empty Voting” and Other Fault Lines Undermining Shareholder Democracy: The New Hunting Ground for Hedge Funds, Lathan & Watkins, M&A Deal Commentary, April 2007
3. At BlackRock, State Street and Vanguard, Millions of Investors are Getting A Choice, Jeff Sommer, New York Times, February 25, 2024
4. Dealing with Activist Hedge Funds and Other Activist Investors, Wachtell, Lipton, Rosen & Katz, September 3, 2024
5. The Evolving Battlefronts of Shareholder Activism, Andrew C. Barker, David F. Larcker, Brian Tayan and Derek Zaba, Stanford Closer Look Series, March 6, 2023

Cases:

6. Ethan Allen’s Revolutionary Defense, Corporate Board Member, Third Quarter 2016
7. Sharks in the Water: Battling an Activist Investor for Corporate Control (A), Stanford Graduate School of Business, [www.hbr.org](http://www.hbr.org), Case CG-20A-PDF-ENG

Session # 8 Questions:

1. From a regulatory and economic perspective, how and why has the role of proxy advisory firms evolved? How have they shaped corporate governance? What are the most significant challenges posed by such firms today and what remedies may be appropriate?
2. Define “empty voting” and address the implications of such voting in corporate governance. What corrective actions would you recommend?
3. What role does shareholder activism play in the capital markets? Why are hedge funds uniquely suited to such a role? What various tactics and strategies do they use with respect to voting and what are their various stated objectives?
4. Based on the information provided in “Sharks in the Water” (Exhibit 4), what actions do you expect Barracuda/Tarco to take next? Explain your reasoning. Based on the information provided in Exhibits 5 and 6, what level of support does the company/ Barracuda currently have from the shareholder base? If Barracuda were to initiate a proxy fight, what level of support would it receive from other shareholders of Tarco (Exhibit 7)? What role would RiskMetrics/ISS play in the proxy process? Consider the possible actions outlined in Exhibit 8 of “Sharks in the Water.” Which of these would you recommend to the board? What other actions might Tarco take?

## **Session # 9:**

Conceptions of Capitalism and Global Corporate Governance- Going Forward

### **Session # 9 Readings:**

#### Foundational:

1. Three Conceptions of Capitalism, Lucian Bebchuk, 2023 Wallenberg Lecture, ECGI Global Blog
2. What Does “Stakeholder Capitalism” Mean to You? Lynn S. Paine, Harvard Business Review, September-October 2023

#### Case:

1. FANUC Corporation: Reassessing the Firm’s Governance and Financial Policies, Benjamin C. Esty and Akiko Kanno, HBS N9-216-042, June 7, 2016
2. Nissan Motors: Corporate Governance Failure, Nisha Kohli and Ajai Gaur, W20498, Ivey Publishing 2020-06-11
3. Japan optimism has been fueled by ‘game-changing’ reforms and Warren Buffett: Here’s what you need to know, Clement Tan, CNBC.Com, June 12, 2023
4. At 7-Eleven Heir’s \$50 Billion Fight to Keep the Company in the Family, River Akira Davis, New York Times, December 18, 2024

#### Session # 9 Questions:

1. Given increasingly integrated global capital markets and the government reform policies, how should Dr. Inaba respond to the US activist demands? What recommendations should he make to his board regarding their financial and governance policies? What are the implications of increasing foreign ownership of the firm in the short and long term?
2. In global capital markets, how are conceptions of capitalism and governmental reforms influencing Nissan and 7-Eleven?

## **Sessions # 10-12: Team Presentations**

### **Other important course information:**

NYU’s [Calendar Policy on Religious Holidays](#) states that members of any religious group may, without penalty, absent themselves from classes when required in compliance with their religious obligations. **Students must notify the professor** in advance of religious holidays or observances that might coincide

with exams, assignments, or class times to schedule mutually acceptable alternatives. Students may also contact [religiousaccommodations@nyu.edu](mailto:religiousaccommodations@nyu.edu) for assistance.

Unless otherwise stated, **you should not use generative AI tools to create any part of an assignment in this course; every submission should be entirely your work.** This course assumes that work submitted by students will be generated by the students themselves, working individually or in groups as directed by class assignment instructions. Use of any work generated by anyone other than the students can be a violation of academic integrity policy. NYU's Academic Integrity Policy has three elements: Plagiarism: taking credit for work the student did not do, Cheating: deceiving faculty members about their mastery of the material through e.g. use of unauthorized materials, and not violating policies set by the student's school, department or division, or instructor.

**As specified in the Welcome email, students are expected to attend all classes. If, for any reason, you must miss a class, please notify us in advance, if possible. All students can mitigate one absence by writing an extra short paper answering a question from the session that they miss. The extra paper must be submitted before the next class.**