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European Commission Proposes
to Moderate Short-termism and Reduce Activist Attacks

Two articles (among several) in a comprehensive proposal to revise EU corporate governance would have a significant beneficial impact if they were to be adopted in the United States. In large measure they mirror recommendations by Chief Justice Leo E. Strine, Jr., in two essays: *Can We do Better by Ordinary Investors? A Pragmatic Reaction to the Dueling Ideological Mythologists of Corporate Law,* 114 Columbia Law Review 449 (Mar. 2014) and *One Fundamental Corporate Governance Question We Face: Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term?* 66 Business Lawyer 1 (Nov. 2010).

The first EU proposal deals with the investment policies of institutional investors. It would require institutional investors to disclose how their equity investment strategy is aligned with the profile and duration of their liabilities and how it affects the medium to long-term performance of its assets. Where the institutional investor uses an asset manager, it would also be required to disclose the particulars of the arrangement with the asset manager to assure that the asset manager aligns its investment strategy and decisions with the profile and duration of the investor's liabilities. Concomitantly, asset managers would be required to disclose to the institutional investors how their investment strategy contributes to the medium and long-term performance of the assets of the institutional investors.

The second EU proposal would require that proxy advisors adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable. Proxy advisors would be required to make annual public disclosure of the following in relationship to their voting recommendations:

a) the essential features of the methodologies and models they apply;

b) the main information sources they use;

c) whether and, if so, how they take national market, legal and regulatory conditions into account;

d) whether they have dialogues with the companies which are the object of their voting recommendations, and, if so, the extent and nature thereof;

e) the total number of staff involved in the preparation of the voting recommendations;

f) the total number of voting recommendations provided in the last year.

While adoption of similar requirements here would not eliminate short-termism, they would moderate it and they would reduce the ability of activist hedge funds to mobilize the voting power of institutional investors to support slash and burn attacks that result in long-term damage to the targets.

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