

WALTER SCOTT



QUARTERLY COMMENTARY

STEWARDSHIP

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October's International Corporate Governance Network (ICGN) Conference in Milan celebrated the organisation's 30th anniversary, marking three decades as the leading global advocate for high standards in corporate governance and investor stewardship.

The event brought together international asset owners and managers, European companies, and governance service providers to reflect on recent developments shaping the stewardship landscape – particularly those emerging from the United States.

Broadly speaking, attendees agreed that while the changes observed in the US this year have tempered engagement with US-listed companies – and support for shareholder resolutions in particular – enthusiasm for integrated governance and sustainability research remains resilient in almost all other markets.

For now, the most significant changes in stewardship strategy pertain to large US asset managers, particularly those with substantial passive portfolios. These managers are accelerating plans to implement 'pass-through voting' to end clients, broadening client options and choice over how proxy votes are cast.

Leaving Delaware?

At a more fundamental level, there was reflection on the longer-term direction of travel for corporate governance 'best practice'. Perspectives on this pivotal question vary not just between jurisdictions, but also between interest groups.

For example, the current regulatory focus in the US on transparency and accountability in corporate decision-making is providing more support to corporations and executive teams, *vis-à-vis* shareholders and other interested parties. Cases in point include US Securities and Exchange Commission (SEC) guidance on disclosure requirements for 'activist' investors, recent moves to enable companies to limit the number of shareholder proposals and measures under way to reduce the influence of proxy advisory firms.

At the US state level, there is also a nascent challenge to the primacy of Delaware as the default choice for the incorporation of larger US companies (over 65% percent of the S&P500 are currently Delaware incorporated).

While the trickle of companies reincorporating in Texas and Nevada may not yet be on a scale to justify the recently coined portmanteau 'Dexus' – or Delaware Exodus – the gradual shift away from what many regard as the gold standard for shareholder rights is significant, nonetheless. Not least, it has prompted Delaware to 'soften' several longstanding tenets of company law, causing concern at the world-renowned Delaware Court of Chancery (a specialist commercial legal institution) which continues to adjudicate over most significant shareholder-company litigation.

Revisiting an old conundrum

The developments of 2025 are of course just the latest iteration of the long-running (400 years and counting...) dynamic interplay at listed companies between what economists call 'principals and agents'. The former are the owners of a business, the latter the hired hands appointed to run the enterprise – a dividing line increasingly blurred by equity-owning management.

An age-old challenge, which predates the advent of joint-stock companies, relates to how principals ensure that they hire the right agents and then incentivise them appropriately to run the business at arms-length but in alignment with their wishes.

That said, the management teams at successful businesses often need the latitude to make timely decisions on strategic issues, and to avoid an unwieldy descent into 'shareholder micro-management' through burgeoning proxy voting ballots and the prospect of frequent referendum-style EGMs.

The principal-agent challenge is most acute when ownership is widely distributed across many thousands of fractional owners, as is the case with most corporations today. The long-term trend towards ownership via institutional investors in the latter half of the twentieth century was the backdrop for the increased use of tools such as the shareholder proposal to encourage management teams to contemplate a particular issue or course of action that might not otherwise have been given due consideration.

It was also the context for moves to introduce governance reforms to enable shareholders to hold management to account through votes on issues such as executive compensation and the appointment of a suitably independent audit firm to protect their interests.

A perceived lack of shareholder alignment and periodic outbreaks of consternation about potential conflicts of interest was also the backdrop for regional governance innovations such as the *Kansayaku* statutory auditors in

Japan and the investor-populated Swedish nominations committees. The seminal 1992 UK Cadbury Report on Corporate Governance was effectively an exercise in addressing principal-agent challenges, such as potential conflicts of interest and weak oversight from shareholders in the wake of high-profile corporate scandals.

Finding a balance

More recently, minority shareholders have used proxy voting to prompt executive teams to consider an array of social and environmental issues, sometimes 'above and beyond' the management of immediately obvious commercial risk and opportunities. This proliferation of differentiated shareholder objectives presents an understandable challenge to management teams, one that has led to growing concerns that companies are being pushed in directions not obviously aligned with what continues to be the primary goal of most business owners – the creation of long-term shareholder value.

Viewed through this prism, it becomes clearer that the SEC's moves to reduce the incidence of shareholder proposals and the decision by some businesses to reincorporate outside of Delaware represent just another attempt to recalibrate the balance of power between principals and agents. While shareholders may disagree on the optimal balance, all should agree that it is helpful to periodically review the status quo and to consider different models of corporate governance from around the world. The ICGN provides a helpful convening forum for just this sort of thoughtful reflection.

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