

interactive dialogue

The “**Corporate Governance & ESG Trends**” webinar will begin at 10:00 am CT

To listen to the audio portion of the webinar, please dial 1-800-536-9136, access code: 9038709#.

- A sign-in sheet and materials were attached to the program reminder email sent Tuesday, December 18, 2018.

- To submit a question before or during the webinar, please use the chat pane on the left-hand side of your screen.
- A replay of this webinar will be available upon request.



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Corporate Governance & ESG Trends

Troy Keller
Mike Droke

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a brave new format

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Board Governance Used to be About

Fiduciary duties

- **Staying informed**
- **Avoiding conflicts**

Running the business

- **Hiring & firing the CEO**
- **Supporting the CEO with a network**

Stepping up in a crisis

- **Takeover protections**
- **Leadership transitions**
- **Securities law exposure**

Then Came...

- **Sarbanes-Oxley Act of 2002**
- **Dodd-Frank Act (2010)**
- **Rise of proxy advisors**
- **Shareholder activism and short-termism**
- **Institutional investors' renewed focus on governance**



Short-termism

During 2015 & 2016, S&P 500 companies paid out over 100% of their earnings in the form of dividends and stock buybacks.

Differing Views on the Board's Role in Social Issues

“Society is demanding that companies, both public and private, serve a social purpose. To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate.”

Larry Fink, CEO Blackrock

“In a recent survey, 47% of Millennials said they believe CEOs ought to take positions on issues that are important to society, according to Weber Shandwick and KRC Research. Another 51% said they were more likely to buy from companies whose CEOs express views they agree with.”

Wall Street Journal – July 27, 2018

“The only goal of investment funds should be to increase returns. Anything that gets in the way of that is a breach of fiduciary responsibility.”

George D. Banks, Main Street Investors Coalition

Environmental, Social & Governance

- **Sustainability**
- **Climate change**
- **Circular economy**
- **Labor practices**
- **Consumer and product safety**
- **Workplace diversity** (including board and executive levels)
- **Political Spending**
- **Energy efficiency**
- **Water consumption**
- **Waste management**
- **Human rights**

“Last year, Russell 3000 companies received 144 shareholder proposals requesting action on social and environmental issues.”

Harvard Business Review: How to Tie Executive Compensation to Sustainability, November 12, 2018

ESG Cottage Industry



Impact Investing

“Incorporation of ESG factors into the investment decision-making process nearly doubled to 43% in 2019 compared to 22% in 2013.”

Callan Institute 2018 ESG Survey of Institutional Investors

Researchers found that 25% of investors now have a hedge fund allocation to an ESG strategy.

Esgclarity.com article, August 13, 2018



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ESG Recent Developments

December 10, 2018	Chairman Clayton testifies before senate panel regarding shareholder proposal thresholds and proxy advisor conflicts of interest
November 14, 2018	SEC holds Proxy Process Roundtable
November 13, 2018	<i>"Corporate Governance Fairness Act"</i> introduced in the Senate
October 19, 2018	Commonsense Corporate Governance Principles 2.0 Launched
October 1, 2018	Coalition of NGOs, academics and investors representing \$5 trillion in assets send a petition for rulemaking to SEC on ESG disclosures
August - September, 2018	Elizabeth Warren first introduces <i>"The Accountable Capitalism Act"</i> & then the <i>"Climate Risk Disclosure Act"</i>
June 27, 2018	Delaware enacts Sustainability Certification Law

New York CLE Code

“We have some NY lawyers participating today. In accordance with NY CLE Rules, the New York Verification Code for this program is

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Dunkin' Donuts & Titanium Dioxide



2015 Shareholder proposal questioning use of nanoparticles in Dunkin' Donuts' ingredients

Led to deselection by Dunkin' Donuts of titanium dioxide as an ingredient in its foods

Some interesting ironies

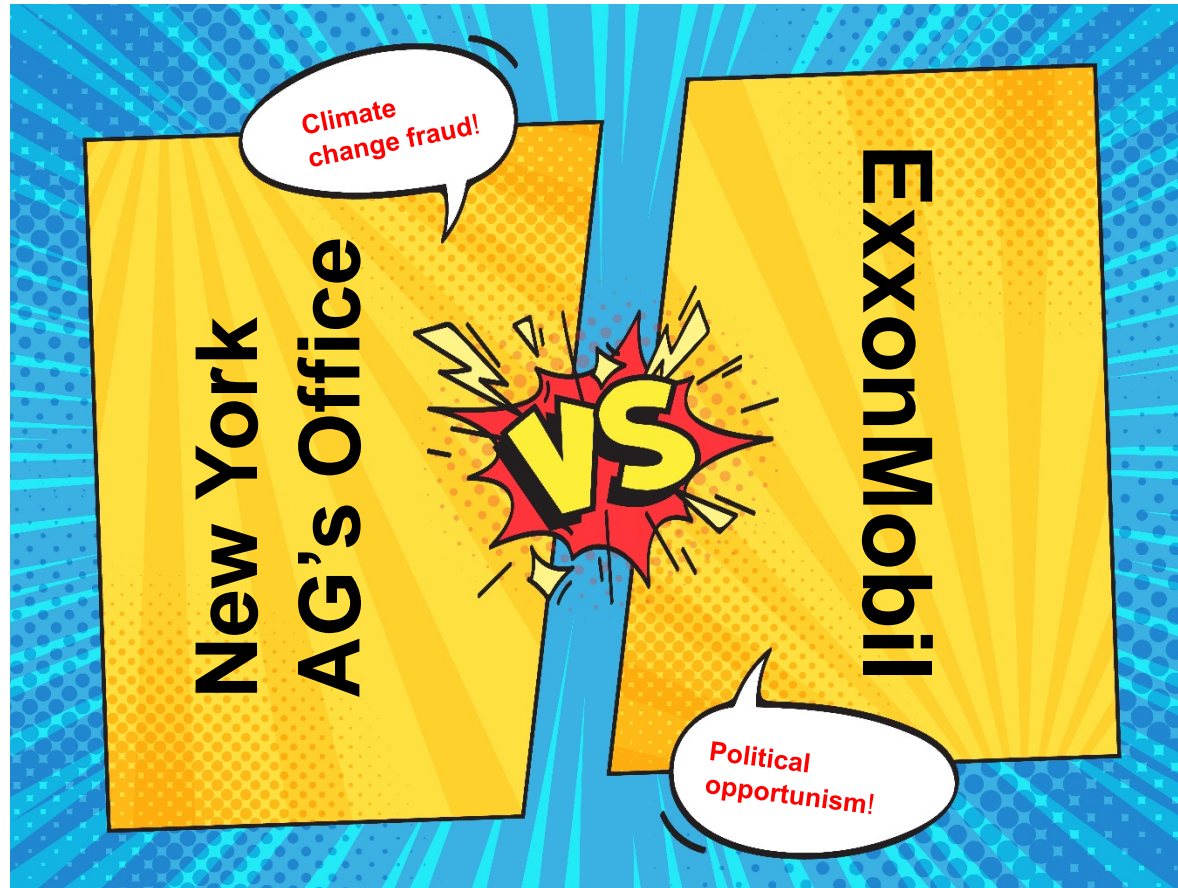
Monsanto & Glyphosate

- Glyphosate is the active chemical in weed control products like Monsanto's Roundup; controversy surrounding the product is well known
- Shareholder proposals were made in 2016 and 2017 seeking a report on the financial impact of public policy developments surrounding glyphosate;
- Two months after Bayer acquired Monsanto, despite no evidence of causation, a jury awarded \$289 mm in damages to a plaintiff alleging glyphosate-induced cancer; now, there are over 9,300 plaintiffs
- Governance Question: were the proposals prescient or did they simply contribute to a perception of harm?



Source: Shareholder Rights Group letter to SEC, dated December 4, 2018

Hijacking of Securities Laws or Investor Protection?



Top recommendations?



who wants more credit? CLE credit, that is

Complete the sign in sheet included in the reminder email (sent yesterday) and return to hubble.michelle@dorsey.com.

We will send CLE Certificates to those who return the form.

questions?



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