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Introduction to Institute for Investor Protection Conference

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Introduction to Institute for Investor Protection Conference

*Michael J. Kaufman**

I never thought about it that way before.

In this remarkable issue of the *Loyola University Chicago Law Journal*, the leading scholars, jurists, and practitioners who have shared their insights in these pages will undoubtedly provoke that response in their readers. Together, the keynotes, articles, and dialogues in this conference issue inspire a critically important, transdisciplinary conversation about diversity, corporate ethics, and compliance in an era of increasing deregulation. The experts do not only explicate the practical impact of precise modifications to the legal structure surrounding our financial markets; they also explore the very nature of human behavior. In short, they take us to the heart of what it means to be human.

The authors of these Articles and Essays first presented their impactful research and diverse perspectives at the annual conference of the Loyola University Chicago School of Law Institute for Investor Protection, entitled “Corporate Ethics and Compliance in the Era of Re-Deregulation.” The Institute is a non-partisan, independent academic center that brings jurists, legal practitioners, business leaders, shareholders, financial advisers, economists, journalists, and scholars together from across multiple disciplines with the shared goal of promoting education, policy, and legal safeguards for the benefit of investors and the public.

Seth Green, the founding director of the Baumhart Center for Social Enterprise and Responsibility, served as keynote speaker of the conference. In his Essay, “Going Beyond Ethics and Compliance: The Growing Corporate Movement to Embrace Social Value Creation,” Professor Green focuses on the legal structures that can encourage and protect the development of socially responsible organizations. In doing so, he explains how and why visionary and productive business leaders

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are choosing to develop enterprises designed to maximize social value in lieu of previous models that sought to maximize shareholder wealth. Instead, these avant-garde leaders are investing in social causes, measuring their businesses' social impact while simultaneously communicating their social commitment on issues ranging from health access to climate change. In addition, Professor Green analyzes the growth of hybrid companies—or social enterprises—that are explicitly formed to create private and social value. Ultimately, Professor Green concludes his Essay with a confrontation of the challenges to corporate social value creation that are presented by legal precedents, while exploring the innovative legal instruments that are helping to affirm and protect the deepening social commitment of the business community.

In his invaluable contribution to this conference, Professor Steven Ramirez of Loyola University Chicago School of Law builds upon his trailblazing work, which demonstrates that the degree of diversity within an organization's management team has a material, positive impact on both its ethicality and its productivity. In his Article, "Diversity and Ethics: Toward an Objective Business Compliance Function," Professor Ramirez makes a compelling case that due to the inherent materiality of a publicly traded firm's compliance and ethical governance structure, the firm's investors possess a right to know the contours of its structure while making investment decisions. In establishing his case, Professor Ramirez presents overwhelming empirical evidence that businesses that use cultural diversity to screen their business conduct will better acclimate themselves to all key constituencies, leading to superior financial performance. To the extent a business enterprise enhances its financial performance through a more diverse screening mechanism, it should realize quantifiable gains over firms that fail to adopt such innovations. Ultimately, Professor Ramirez argues that the optimal structure for corporate ethical screening should emerge to give shareholders enhanced value. Further, competitive pressure can enhance firm ethicality that investors can objectively measure. Professor Ramirez concludes by demonstrating why the Securities and Exchange Commission ("SEC") should facilitate the process of discovery of optimal ethical and compliance structures within public firms through the issuance of disclosure guidance.

Building on Professor Ramirez's foundation, Cheryl Wade, the Harold F. McNiece Professor of Law at St. John's University School of Law, gets to the core of why current diversity programs and initiatives at companies throughout the United States are inadequate. In her discerning Essay, "Corporate Compliance That Advances Racial Diversity and Justice and Why Business Deregulation Does Not Matter," Professor Wade argues that board diversity requirements

promulgated by the SEC have failed to inspire companies to move beyond empty rhetoric about diversity and have resultantly added little value for individuals seeking real information about racial equity goals in the business setting. Rather than this ineffective rhetoric, Professor Wade proffers that best practices in corporate governance, particularly those focusing on race and gender equity, can promote and encourage ethical and compliant conduct throughout an organization. Next, Professor Wade approaches the problem of racial harassment and discrimination in the aftermath of the recent and more thorough discussion about gender inequality. Reflecting upon this discussion, she suggests that improvements in corporate and organizational governance will diminish racial bias in the business context. In doing so, Professor Wade offers practical steps to incentivize businesses to comply with already-existing antidiscrimination law, contending that business leaders should understand that racism and discrimination persist in the twenty-first century, albeit its implicit, unconscious, and more subtle occurrences. Professor Wade explains that with this understanding, business leaders will be able to govern companies in a way that ensures that racial bias can be detected, monitored, and addressed.

In his thought-provoking Article, “Corporate Ethics: Approaches and Implications to Expanding the Corporate Mindset of Profitability,” Professor Arthur Acevedo of The John Marshall Law School challenges the prevailing assumption that ethical behavior is inimical to productivity. Professor Acevedo presents a growing body of evidence that the marketplace actually rewards ethical conduct through his analysis of legal authority that empowers managers to consider ethics as part of their informed business judgments. Professor Acevedo demonstrates that to remain competitive and relevant in the marketplace corporations must consider ethics in their decisionmaking process.

This conference issue also includes diverse perspectives from the academy and the practicing bar regarding potential changes to laws and regulations that influence investor protection. Professor Celia Taylor of the Sturm College of Law, University of Denver, provides an excellent overview of the status of certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) in her Essay, “The Dodd-Frank Death Knell.” Based on Professor Taylor’s panel discussion at the conference with Professor Wendy Couture of the University of Idaho College of Law and Howard Suskin, a partner in the law firm of Jenner & Block, her Essay shares the different viewpoints regarding regulatory changes that will affect investors directly and those that demonstrate continuing animus toward transparency and investor protection. Professor Taylor first considers the fate of the resource extractive industries rules and the conflicts minerals rule. She then

moves on to a discussion of the attempt to roll back say-on-pay and CEO pay disclosures, in addition to the attempt to limit the ability of shareholders to submit shareholder proposals. Professor Taylor ends with a discussion of the weakening of the SEC's whistleblower powers, and Congress' utilization of budgetary appropriations as a means of undermining Dodd-Frank and the Consumer Financial Protection Bureau.

Next, Dean Melinda Molina of Capital University Law School challenges us to take a careful and introspective look at legal education. In her Essay, "Addressing the Lack of Diversity on Corporate Boards: Building Responsive Law School Pedagogy and Curriculum," Dean Molina first shows that board diversity may lead to better decisionmaking, greater access to a broader talent pool, and enhanced corporate reputation among shareholders and consumers. She then calls on us to consider how law schools may be complicit in the development of a culture that lacks respect for diversity in the boardroom. To address these issues, Dean Molina offers innovative ways in which law schools may better educate their students to transform that culture into one that genuinely values and facilitates diverse decisionmaking.

Finally, Judge Shira A. Scheindlin, former United States District Court Judge for the Southern District of New York, weaves together many of the themes in this conference, including the value of diversity in the legal profession and in decisionmaking. Judge Scheindlin shares her experience and research regarding persistent gender bias in the practice of law. She also reflects on her landmark decisions establishing ethical standards for electronic discovery, as well as her earth-shattering opinions declaring unconstitutional police use of racially discriminatory stop-and-frisk procedures. Like all of the contributors to this exceptional conference, Judge Scheindlin inspires us to look at existing legal structures, business organizations, and cultural institutions with fresh eyes—and to never think about them the same way again.