The Council of Institutional Investors welcomed just shy of 500 attendees from member organizations at CII’s fall conference September 16–18 in Minneapolis. Many thanks to the staff of the Minnesota State Board of Investment, who have been members of CII since 1988, and to Minnesota Governor Tim Walz’s office, for helping to make the conference such a huge success.

Prior the kick-off of the conference, attendees participated in CII’s continuing series of corporate governance Master Classes with a course focused on evaluating pay-for-performance. Other attendees arrived early to take advantage of the time for private meetings, a part of CII’s Engagement Exchange program. The program offers investor and public company members an opportunity to discuss issues of interest one-on-one or in small groups. This popular event is for CII members who are asset owners, asset managers and/or public companies. This year’s Engagement Exchange was the largest to-date, with 21 companies and investors participating in 59 meetings.

CII’s commitment to collaboration with U.S. public pension fund members continued with a private session for pension fund trustees on the new focus on stakeholder interests and the best approaches for public pension funds, followed by a private dinner hosted by CII later that evening.

The conference plenary sessions highlighted SEC Commissioner Robert Jackson’s view on the future of dual-class stock, the evolving role of the board of directors, CIOs’ perspectives on fiduciary duty and ESG investments, gender pay equity, a board member’s insights into the PCAOB and the challenges presented by renewable energy deployment and transitions.

As part of the benefits of membership, CII continues to offer current member organizations the opportunity to host their own informational panel sessions or events at specific times during the conferences. The member-led sessions at the fall conference included panels on a wide array of important topics in corporate governance, including: artificial intelligence and its role in the boardroom; M&A activity and trends; the transformation to a low-carbon economy; forced arbitration clauses and the repercussions for institutional investors; investors’ views on the opioid crisis; and the risk of private prisons.

The member-hosted sessions were followed by Daniel Ariely, professor of psychology and behavioral economics at Duke University, who gave an engaging presentation on “The Secret and Benefits of Understanding Motivation at Work.”

CII breakout sessions included a deeper dive into meaty topics such as corporate governance and the bankruptcy process, sustainability reporting standards and audit issues and proxy voting.

The last day of the conference included plenary sessions hosted by CII’s International Governance Committee and Policies Committee. The Shareholder Advocacy Committee hosted the always popular “lighting round” during which CII members shared their 2019 proxy season accomplishments and provided a glimpse at their plans for the 2020 season. CII also hosted a private session for the Proxy Voter Working Group to discuss a range of pertinent topics.

You can view the full conference program, which includes the attendee list, speaker bios, full agenda and more here. Video and audio recordings of all of the sessions are available to current CII members here and are available to the public upon request.

Looking ahead, CII is excited to celebrate its 35th anniversary with special events at the spring conference at the Mandarin Oriental Hotel in Washington, D.C., March 9–11, 2020. The 2020 fall conference will be at the Westin St. Francis in San Francisco, September 21–23.
Dual-Class Stock and the Future of Corporate Governance

“Intergenerational control of America’s companies raises fundamental problems with accountability,” said SEC Commissioner Robert Jackson, speaking about dual-class share structures with no sunset provisions. Jackson, the opening speaker of the conference, cited research his staff conducted showing that dual-class companies do better in the short-run, but perpetual dual-class firms underperform in the long term. Arguments for intergenerational control of U.S. companies are incredibly weak, he added. Jackson said the stock exchanges have not budged in response to pressure from CII and others to stop listing multi-class companies that lack sunset provisions because the exchanges are for-profit entities that do not want to risk alienating client companies.

Jackson expressed concern that the SEC’s recent interpretation that proxy advice is solicitation could deter new firms from entering the U.S. market to provide these services and could even regulate an existing advisor out of business. He also questioned why the SEC was regulating proxy advisors before tackling proxy plumbing, an issue that he said enjoys broad consensus.

Jackson also championed the SEC’s attention to market structure concerns. “I'm not sure if I've been prouder of anything I have done at the SEC,” Jackson said referring to the SEC’s transaction fee pilot, which measures the effects of maker-taker rebates on equity trade execution. “It is time for the stock exchanges to acknowledge competitive forces drive their prices,” he said.

On required disclosure of environmental, social and governance matters, Jackson said he prefers rules that are principles-based but also have clear measures to make them easier for investors to use and compare. Much current disclosure has become boilerplate because regulators are not providing sufficient guidance, he said.

Jackson said the recent announcement by the SEC’s Division of Corporation Finance that it may respond orally, instead of in writing, to some no-action requests and may not state a view at all on others will make it more difficult for investors to navigate the rules. He predicted that these new procedures won’t change the landscape substantially. But he encouraged CII members who see inconsistencies in no-action rulings next proxy season to contact his office.

Evolving the Board

Kathy Higgins Victor, chair of Best Buy’s nominating, corporate governance and public policy committee, spoke with Best Buy General Counsel and Chief Risk & Compliance Officer Todd Hartman about the electronics retailer’s evolution. Higgins Victor was Best Buy’s first female director when she joined the board in 1999. As nominating committee chair, she discovered that the board was comprised of entrenched directors who had served for 25 to 30 years and were friends of the founder and she pushed for change. Today, she noted, women account for a majority of the board, and 30% of Best Buy’s directors are people of color. Higgins Victor said corporate boards should be diverse because shareholders and society are demanding diversity and because “the people making the decisions should look like the people affected by those decisions.” She stressed the importance of regularly examining the board and determining if it needs refreshment. Hartman agreed that annual engagement with investors outside of proxy season is essential, and he said he is surprised that more companies don’t initiate it and
that some shareholders decline to participate. The two also discussed succession planning at Best Buy, which recently named its first female CEO.

**Fiduciary Duty and ESG in Investments: CIO Perspectives**

CII Executive Director Ken Bertsch moderated a panel of CIOs who shared their insights about fiduciary duty as it relates to integrating environmental, social and governance (ESG) considerations into investment decisions. “It’s a material fact that climate change will affect regulation and returns on investments,” said Scott Mather, CIO of PIMCO. “We need to pay more attention than we did 10 years ago.” All three panelists agreed that more standardized reporting on corporate environmental and social data would be extremely helpful. Dave Zellner, CIO of Wespath, noted that there is currently a lot of inconsistency with data providers. Amy McGarrity, CIO of the Colorado Public Employees’ Retirement Association (CoPERA), noted that as more companies offer disclosure in these areas, the Sustainability Accounting Standards Board (SASB) has helped CoPERA compare available data. McGarrity also said that while CoPERA is under pressure to divest from fossil fuels, it divests only when legislation requires it. “We want to still have a seat at the table,” she explained. Zellner said Wespath is “de-emphasizing” companies that are not preparing for a low-carbon economy and it does not invest in firearms manufacturers.

**Public Company Accounting Oversight: Key Issues and Developments**

Jay Brown, a Public Company Accounting Standards Board member, gave the PCAOB an incomplete grade for “accountability and transparency,” noting that the PCAOB is not subject to federal laws that provide a minimum level of transparency, such as the Sunshine Act, Freedom of Information Act and Administrative Procedure Act. As a result, the PCAOB’s thought process and regulatory approach to auditors are opaque to investors. He noted that the board has adopted a strategic plan that promises increased transparency and created a new position to engage in outreach to investors, audit committees and preparers. But, he said more needs to be done, and suggested that the board take the following steps:

- disclose on the PCAOB website relevant correspondence from third parties as well as any responses, calendars for the full board and agendas for meetings with outside organizations.
- provide a mechanism that would allow any stakeholder to petition the PCAOB for a change in standards or rules and then post the petition and any comments.
- do a better job of making information about when the PCAOB changes its approach to inspections available to investors and the public.
- provide an explicit invitation on the PCAOB website to investors and stakeholders about scheduling meetings with the PCAOB and the full board.
- take an inventory of information that the PCAOB has kept confidential and reconsider the approach given the passage of time.

Brown also gave the PCAOB’s Division of Registration and Inspections an “A” for making a concerted effort to improve the quality of audits and improve trust in the financial disclosure process.

He concluded his remarks by urging CII members to share their ideas for improving the PCAOB’s transparency by writing, calling or arranging meetings with staff or the full board.
Gender Pay Equity
Kimberly Churches, CEO of the American Association of University Women, suggested several ways to address gender inequality in pay. In an interview with Chevron Corporate Secretary and Chief Governance Officer Mary Francis, Churches noted that 11 states have passed robust new pay equity laws, but said companies also must do more. She recommended that firms institute transparent hiring and promotion practices, ban salary history questions in the hiring process, audit pay practices regularly and improve parental leave. At the board level, Churches supported moving to mandatory inclusion of women directors because most companies are moving too slowly to women to serve. She noted that 21 states are considering legislation on this front. “When female representation gets to 30%, that is where real change starts to happen,” she explained.

Lessons from the Front Lines: Challenges in Renewable Energy Deployment & Transitions
John Mulé, director of legal, legislative policy and shareholder services for the Minnesota State Board of Investment moderated a panel that discussed how utility companies can focus on renewable energy while maintaining standards that protect workers and communities. Chris Clark, president of Xcel Energy, said his company is on track to reduce its carbon emissions by 80% by 2030 and to achieve a zero-carbon footprint by 2050. Dan Lipschulz, vice chair of the Minnesota Public Utilities Commission said as a result of the Minnesota Clean Energy Transition, just 38% of the state’s energy comes from coal, with the rest coming mostly from wind and solar power. Both panelists agreed that it is important to consider the workforce when transitioning to new energy suppliers. “We view labor as a partner in this transformation of the industry,” said Clark. “If we are closing a coal plant, we do it through attrition and retirement and we commit to economic development in the communities,” he explained. Lipshultz said the commission, in transitioning to lower carbon, renewable energy alternatives, is focusing on reliability, affordability, the socio-economic impact and the environmental impact. “In the last several years we are considering workforce issues more,” he noted. “If we don’t bring everyone along, we won’t all get there,” said Kevin Pranis, marketing manager for LIUNA Minnesota and North Dakota. Kate O’Hair, VP of development for EDF Renewables, said her company is getting the message out that good, local jobs are an important part of renewable energy goals.

Luncheon Keynote: The Secret and Benefits of Understanding Motivation at Work
Daniel Ariely, professor of psychology and behavioral economics at Duke University and a noted author, discussed motivation in the workplace and the effect of bonuses. Through extensive research, Ariely found that intangible rewards motivate people to a far greater extent than monetary rewards. Honesty, fairness and a good work culture are extremely important to employees, he said. “At companies that don’t treat their employees well, everyone loses. At places where everyone likes to work, everyone wins,” Ariely explained. He supported tying executive pay to worker attrition and satisfaction. He also suggested that to help employees feel safe and valued, companies set up college savings plans for their workers’ children.

Breakout Session: Corporate Governance and the Bankruptcy Process
Sharon Manewitz, principal and executive director at Manewitz Weiker Associates, drew on her long history working with troubled companies to emphasize the
important role of the board in guiding companies through all stages of the bankruptcy process. Speaking with CII Executive Director Ken Bertsch, she detailed how the board must ultimately make the decision to file bankruptcy and must stay involved in the ensuing expensive and involved process. If a company decides to restructure and move forward, Manewitz said she believes it needs a board that will protect the new owners of the entity during this transition. Manewitz explained that “like in a healthy company, the duties of loyalty and duties of care continue and the strengths of the new board members are critical to the future of the company.” Ultimately, Manewitz believes that the board that brings a company out of bankruptcy should step down within five years to allow for directors who are better suited to bring the company forward to the next generation.

According to Manewitz, some of potential early warnings of bankruptcy that shareholders should be aware of include the resignation of board members, turnover in senior management and morale issues in middle management. She explained that while pension funds and unions are increasingly demanding a seat at the table during the restructuring process, many investor concerns at healthy companies, including ESG issues, tend to take a backseat at firms coming out of bankruptcy.

Breakout Session: Auditing Issues and Proxy Voting
Mary Morris, an investment officer for CalSTRS, led a discussion exploring how audit reports can inform proxy votes on auditor ratification and director elections. Panelists stressed the importance of ensuring the accuracy and thoroughness of audit reports using both internal and external controls. The discussion centered on recent shareholder ire at GE over the company’s relationship with external auditor KPMG. Elizabeth Mooney of Capital Group was surprised that 88% of shareholders voted for ratification of KPMG’s audit report at GE this year, a relatively small amount of opposition, given the issues that have surfaced. Michele Hooper, president and CEO of The Directors’ Council, recommended that the entire audit committee be refreshed when a significant number of votes are cast against an external auditor’s report. All panelists stressed the need to analyze and compare an independent auditor’s tenure length to industry competitors to avoid the problems that have arisen at GE and other companies.

Julie Bell Lindsay of the Center for Audit Quality highlighted the PCAOB’s implementation of Critical Audit Matters (CAMs) late next year. Under a new rule, external auditors are required to disclose what they found to be the most challenging in reviewing companies’ financial statements.

Breakout Session: Sustainability Reporting Standards
Michael Garland, assistant comptroller for corporate governance and responsible investment for the New York City Comptroller moderated a panel on the progress and problems on the road to a standardized framework for disclosing business-useful ESG data. Janine Guillot, director of capital markets and outreach for the Sustainability Accounting Standards Board (SASB), explained that her organization sets sustainability standards for 77 industries on most material issues. She said 100 companies are now reporting to the SASB standards. She emphasized that SASB is not trying to replace the Global Reporting Initiative (a broader reporting framework) or corporate sustainability reports. Rakhi Kumar, senior managing director for State Street Global Advisors, discussed State Street’s own ESG scoring system called the Responsibility-Factor (or R-Factor), based partly on the SASB framework. She noted that Bloomberg is using R-Factor in its just-launched SASB ESG index family, which includes U.S. large cap equity and investment-grade corporate bond ESG indices. Lisa Beauvilain, head
of sustainability and ESG and managing director at Impax Asset Management, said Impax integrates ESG analysis into its financial analysis “to see what the marketplace might not be seeing.” Yafit Cohn, vice president, chief sustainability officer and group general counsel for Travelers, said it was not difficult to convince her company to begin issuing sustainability reports because management knew they would provide more clarity to investors. All of the panelists agreed on the need for convergence among sustainability reporting frameworks.

International Governance Developments

Magriet Stavast, senior advisor for responsible investment at PGGM, moderated a panel of experts discussing recent developments in overseas markets. Edouard Fremault, executive director and partner at Deminor, said after news broke about the money laundering scandal at Danske Bank, his firm filed a motion for an independent investigation. This move received a great deal of support from U.S. investors, but not from investors in Denmark or Sweden, he noted. Aleksandr Williams, senior governance specialist for APG Asset Management, explained that his firm looks at a company’s reaction to a scandal before deciding whether to divest. In many of the more serious cases, the companies rotate their boards in response, he noted. Teresa Barger, co-founder and CEO of Cartica Capital Management, said corporate governance in China is abysmal, but the introduction of more independent directors, protections for minority shareholders and ESG reporting are improving the situation. Barger also explained that the Chinese government changed its securities and criminal laws so that those who are convicted of providing fraudulent disclosures can serve jail time. Beijing also has begun rating companies’ behavior using a social credit system similar to the one it uses to evaluate all of its citizens. Commenting on India’s new requirement that companies spend at least 3% of their three-year net profit on corporate responsibility, Barger said this often leads companies to “greenwash,” for example by building a playground, but continuing to pollute. Miekela Singh, principal, corporate governance for the Ontario Teachers’ Pension Plan, said even though the exchanges in Singapore and Hong Kong opted to allow companies with dual-class shares to list, few such firms have listed so far. She also said the exchange in South Korea has not decided whether to allow dual-class listings and is seeking investor input.

Policy Outlook: Proxy Voting and Proxy Advisory Firm Regulation

Aeisha Mastagni, portfolio manager for CalSTRS, moderated a panel discussion about the interpretation and guidance on proxy advisory firms that the SEC issued in August. Roy Katzovicz, chairman of Saddle Point Group, said the SEC’s interpretation that proxy advice is solicitation threatens the existing firms’ business models and blocks competitors from entering the U.S. market. Without exemptions from solicitation, proxy advisory firms will have to file their company research reports with the SEC—making them public and destroying their business. The determination that proxy advice is solicitation also subjects proxy advisory firms to a heightened threat of litigation. “Why are we messing with this system because of a few lousy proxy votes?,” asked Kurt Schacht, managing director at the CFA Institute. Schacht also noted that none of the participants in the SEC’s November roundtable on proxy plumbing expressed a need for more regulation. “If we lost our proxy advisors, our staff couldn’t handle the volume of proxies coming in,” said Illinois State Treasurer Michael Frerichs. Mastagni explained that proxy advisor research helps CalSTRS triage its voting so staff can spend more time on proxies with complicated issues. In terms of
the guidance that the SEC issued for how asset managers should oversee their proxy advisors, Sara Donaldson, vice president of investment stewardship at Voya, said she thinks it will prompt many smaller money managers to vote fewer proxies. This, she predicted, will give larger funds even more clout over voting outcomes. Frerichs noted that the politicians who are backing this regulation are also the ones who claim to promote a free market.

**ESG Priorities and Director Accountability**

Shareholder Advocacy Committee Co-Chairs Louis Malizia and Gianna McCarthy moderated a panel discussion on how institutional investors align their ESG priorities with director votes. Clare Payn, head of corporate governance in North America for Legal & General Investment Management, explained that her fund identifies sectors key to moving toward a low-carbon economy, ranks companies within those sectors, engages with them and helps them transition to a more environmentally friendly approach. In these engagements, LGIM asks the companies to provide time frames for moving toward lower-carbon emission. If the firms fail to meet those deadlines, LGIM may vote against the CEO or divest from the company entirely, she explained. State Street Global Advisors will vote against the nominating committee at a company that does not have any female directors, said Matt DiGuiseppe, vice president and head of Americas and asset stewardship for State Street. State Street is moving beyond just female representation on the board and is pushing for diversity throughout the ranks at companies, he said. “We don’t want to vote against boards, this is just us expressing a need for improvement,” said DiGuiseppe. Tracey Stewart, manager of corporate governance research for the Florida State Board of Administration, cautioned against overboarding a small group of female director candidates and stressed the importance of selecting directors based on their strategic abilities, not just gender. “We want to make sure this is a productive effort and avoid tokenism,” she added. Maureen O’Brien, vice president of Segal Marco Advisors, said her firm votes against directors at companies where a majority of shareholders voted against say on pay and where the board has failed to implement a shareholder proposal that received majority support. In addition, if a board has no women directors, Segal Marco votes against the nominating committee. McCarthy explained that New York State Common votes against the entire board if there are no women directors and votes against the nominating committee if there is just one female on the board.

**CII Members’ Lightning Round**

During this part of the committee’s plenary session, CII members from BNP Paribas Asset Management, CalPERS, Ceres, Change to Win, the Connecticut Treasurer’s Office, Illinois State Treasurer’s Office, LACERA, Lawndale Capital Management, Majority Action, Segal Marco and UFCW shared their initiatives from the 2019 proxy season and offered a glimpse of what they have planned for 2020. The speaking notes they provided to CII are posted here.

**Markets Advisory Council Meeting**

The Markets Advisory Council’s September 16 meeting included a staff update on CII activities, a MAC member presentation on a recently issued annual report analyzing trends in audit committee disclosures, and a robust discussion of over a half dozen topics.

The CII staff update covered recent CII advocacy activities involving dual-class stock. MAC members inquired about CII staff efforts to obtain the support of money managers for time-based sunsets and coordinate advocacy efforts with investors opposing dual-class structures in Spain and other countries. A member also inquired whether there would be opportunities for directors who are currently
included on CII’s dual-class enabler list to be removed from the list under certain facts and circumstances. A MAC member discussed ongoing research to better identify the gap between economic and voting interests at companies and the linkage to long-term shareholder value. Another MAC member noted that some proponents of dual-class stock in other countries argue that dual-class stock is necessary for management to be more responsive to multiple stakeholders.

A MAC member presented the highlights from a recently issued report analyzing trends in audit committee disclosures in the proxy statements of S&P 100 companies.

On the topic of proxy regulation, several MAC members inquired about the status of SEC actions (and CII staff’s response to those actions) the regulation of proxy advisory firms, potential amendments to the shareholder proposal rule and announced changes to the Rule 14a-8 no-action process.

Then CGAC members continued a discussion that they began at the spring meeting about the “me too” movement and company practices and policies relating to sexual harassment. That conversation also encompassed gender pay equity and how to move beyond gender when trying to boost diversity.

After polling members for speaker and meeting topic ideas, Donaldson was joined by CII Deputy Director Amy Borrus. They both led a discussion about the SEC’s recent guidance and interpretation regarding proxy voting advisory firms and CII’s response to that guidance.

The last part of the meeting focused on the Business Roundtable’s recent Statement on the Purpose of a Corporation. Borrus offered a recap of what the BRT said and then shed light on CII’s response. Hans Christophe Hirt from Hermes, who is a council member, offered European’s perspectives on the BRT and CII statements as well as models in other markets.