



TRADE UNION ADVISORY COMMITTEE  
TO THE ORGANISATION FOR ECONOMIC  
COOPERATION AND DEVELOPMENT  
COMMISSION SYNDICALE CONSULTATIVE  
AUPRÈS DE L'ORGANISATION DE COOPÉRATION  
ET DE DÉVELOPPEMENT ÉCONOMIQUES

# The role of institutional investors in corporate governance - a trade union perspective

OECD-IOPS Global Forum on Private Pensions

Session 4 "Pension Funds, Long-term Investing and Capital Market  
Development", 14:30 - 16:00

Wednesday 26 October 2011, Cape Town



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# OECD findings & recommendations post-crisis

## The stewardship of workers' capital

### Toward responsible shareholder activism

## Remuneration

- "Managers have had too much influence", "very weak" link with performance, "overly complicated or obscure" schemes, that are "asymmetric with limited downside risk", imperial CEOs ...

## Risk management

- "widespread failure", "risk managers ... not regarded as an essential part of ... the company's strategy"

## Board of Directors

- Does too much independence lead to incompetence?

## Shareholders

- "seldom challenge boards", "ineffective monitoring", "concerned with short termism"
- cross-borders voting & acting in concert regulation "discourage" activism

## Conflicts of interest

- Remuneration consultants, proxy advisors, asset managers ...

## Mea culpa, post-crisis

- *"On the face of it, shareholder value is the dumbest idea in the world"*  
Jack Welch
- *"I made a mistake in presuming that the self-interests of organizations, specifically banks and others, were such as that they were best capable of protecting their own shareholders and their equity in the firms"*  
Alan Greenspan

## The Gulf of Mexico oil spill - 20th April 2010

- (Explosion of Texas City refinery in 2005)
- blow-out of the Deepwater Horizon oil rig,  
5 million barrels, 11 dead, BP cost estimate \$40bn
- Only 60% of capital voted at BP's 2010 AGM
- 57% of votes in favour of chair of safety committee, proxy advisors recommended abstain (ISS) or in favour (Glass Lewis)
- Unicredit: "analysts claim that BP has a good operational momentum because of its "first-mover advantage in cost cutting" (17 December 2009)



## What the OECD recommends: Enron bis repetita !

- Remuneration to be approved by AGM, shareholder right to nominate & "role" in appointing board members
- Separation of CEO & chair is desirable
- Disclosure of voting policies and voting records
- Cross-border voting
- Enhance the role of chief risk officer

## What's new

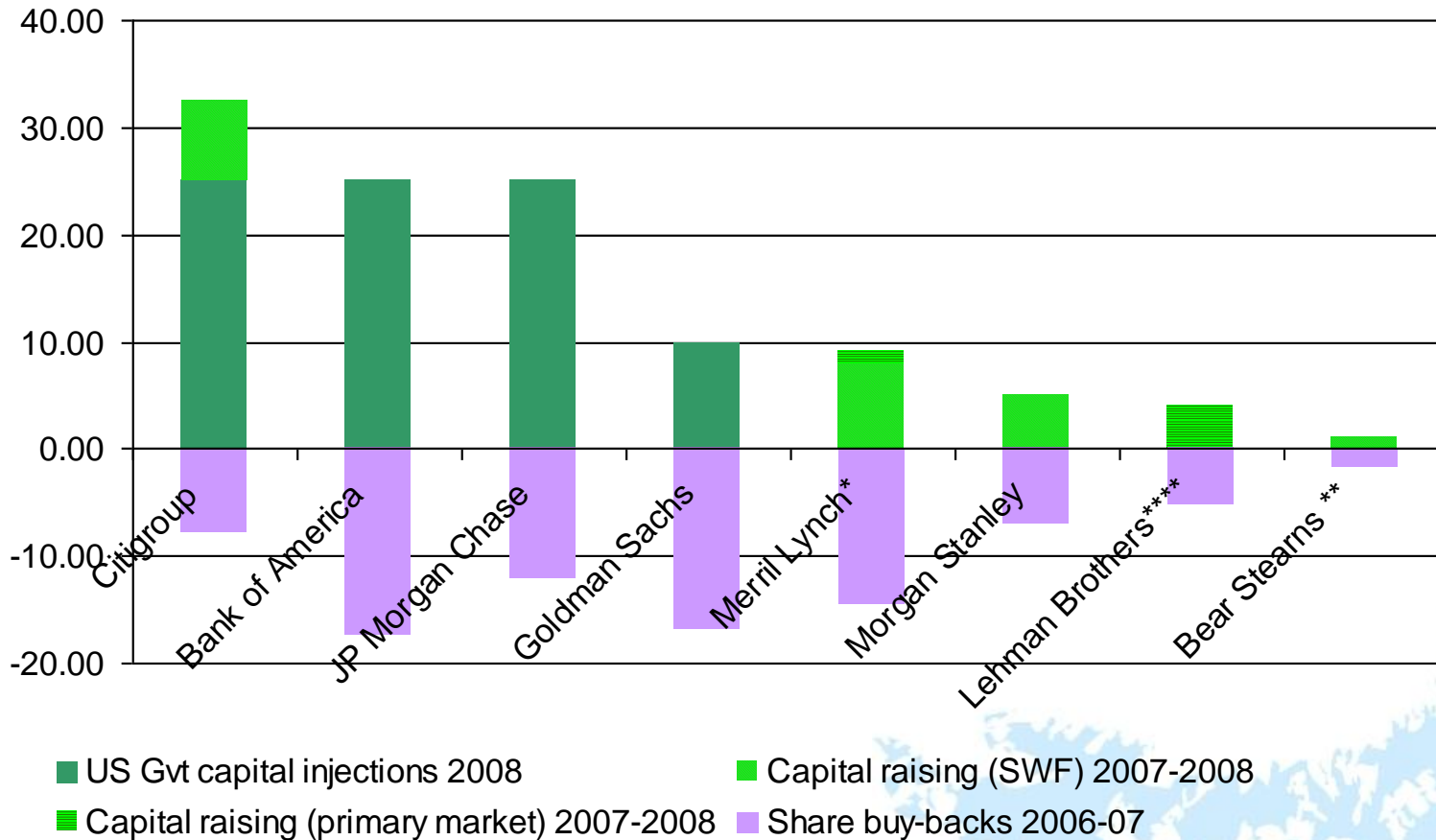
- Remuneration schemes to be designed for the long term
- Reconciling board independence & competence via expanded "fit and proper" criteria (probity and technical knowledge)
- Curb conflicts of interest (consultants, AM, proxy advisors)
- Clarify the scope of "concert party" rules - private equity & activist hedge funds should not be hampered as a side-effect of regulatory reforms

## What is missing

- Shareholder short termism
  - *Procyclicality of dividends and share buyback programmes*
- Boards: the ESG dimension of directors' duties
- Activism: are all forms of activism desirable?
  - *Transparency and accountability of private pools*
- Moving from voluntary to regulatory approach
  - *The OECD concept of « functional equivalence », a recipe for doing nothing?*
- Considering workers as a valid stakeholder group
  - *Countervailing force to management entrenchment*
  - *Using collective bargaining for risk management purpose*

# Procyclicality of dividends and share buybacks

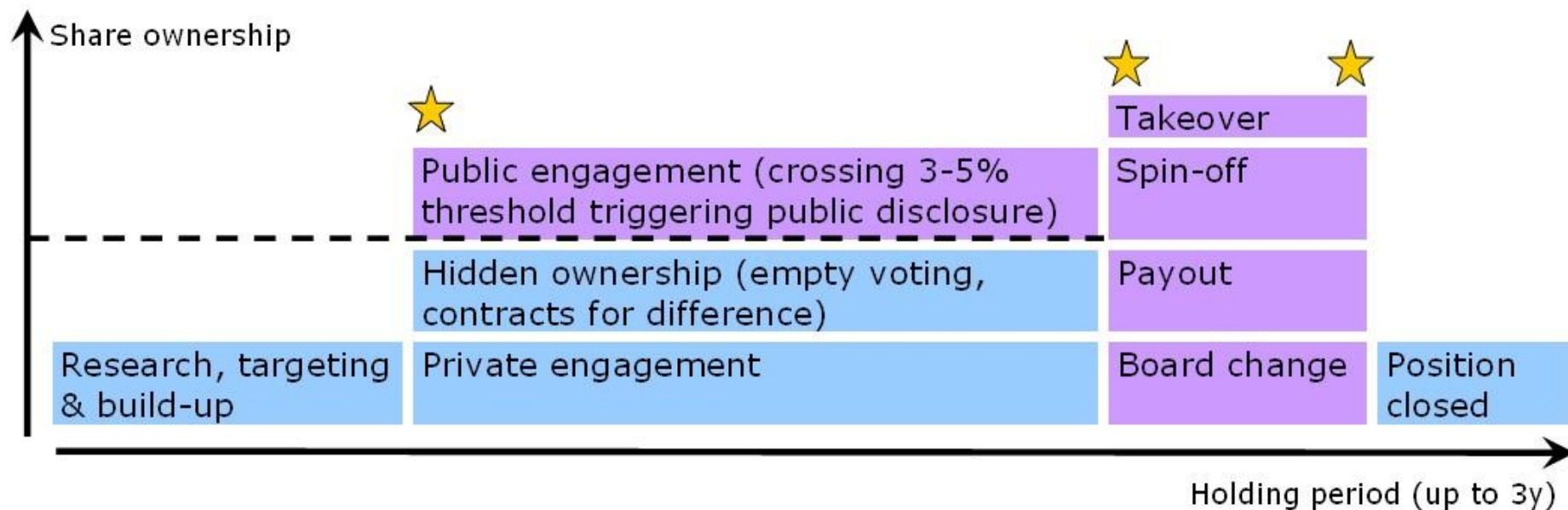
## Capital injections post-crisis vs Share buy-backs pre-crisis



## Are all forms of activism desirable?

# Time line of a stylised hedge fund activist engagement

## – Private vs public engagement



Source: adapted from Becht, Franks & Grant 2010



## Are all forms of activism desirable?

### Accor hotel group

- Colony Capital Europe & Eurazeo build up 30% stake in 2009
- CEO forced out, board change, opposition by the EWC and French state-owned minority shareholder
- Spin-off of the voucher business, sales of real estate assets in the hotel branch
- Standard & Poors downgrades Accor (Feb. 2010)

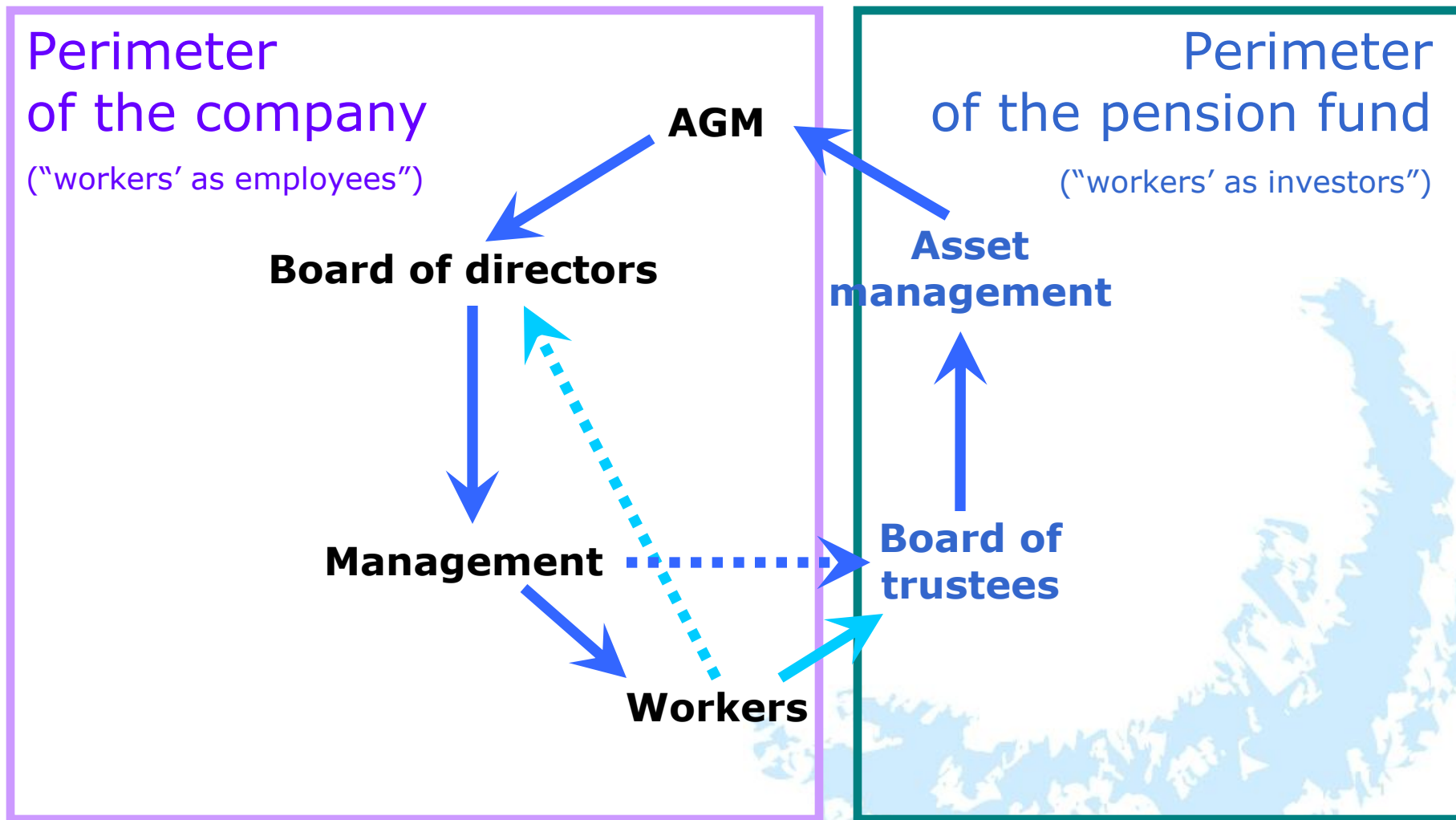
### Cadbury

- Hedge fund manager John Paulson build stake in 2006, also shareholder of Kraft
- Spin-off of the soft drinks division 2008
- Takeover bid by Kraft December 2009, Hedge funds ownership rises from 5% to 30% in 1 month
- Closure of Somerdale factory, February 2011

### Pension funds' share of hedge funds' funding

- 25% - 40% ? more if funds-of-funds are included

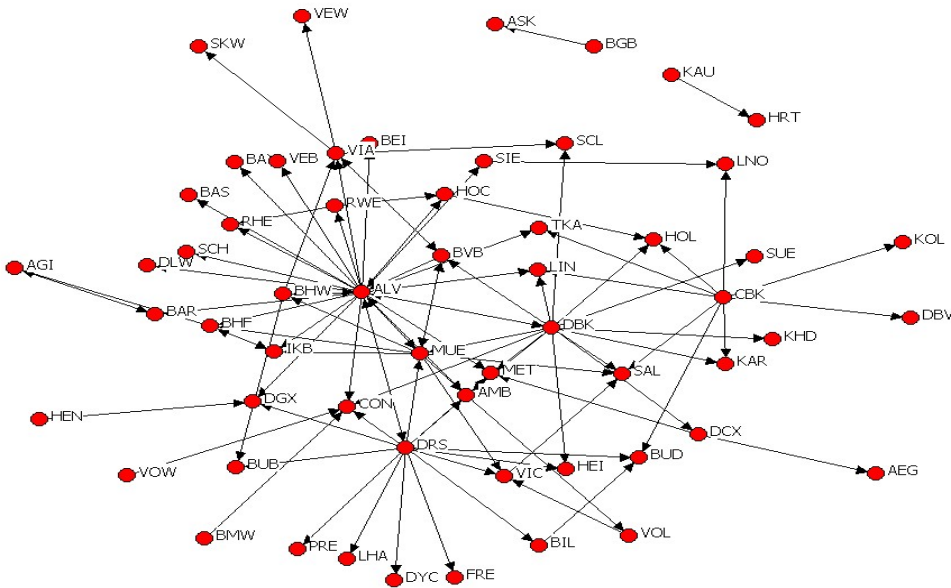
# The Stewardship of Workers' Capital



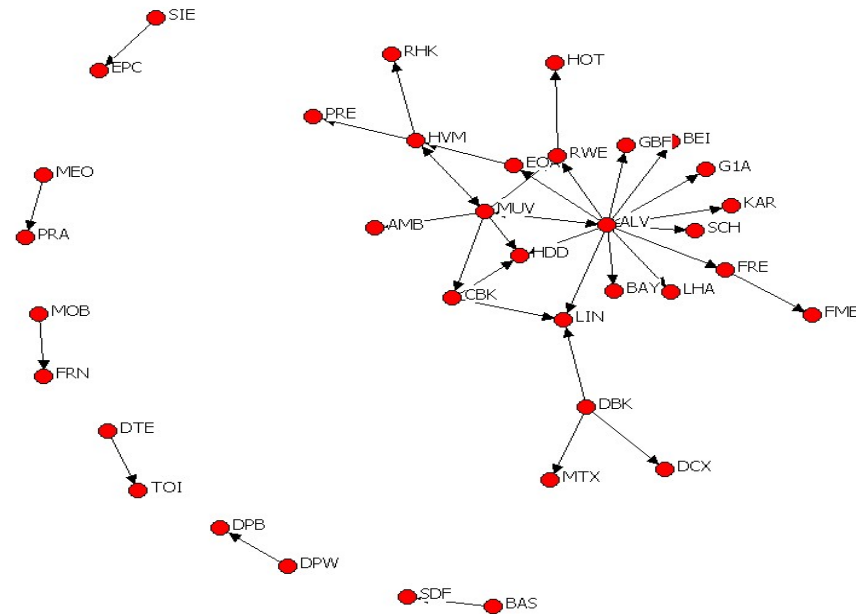
## Changing ownership structures

- Implications for trade unions and industrial relations

« Germany AG » 1995



« Germany AG » 2005



## Workers' K: for what purpose?

### Board accountability

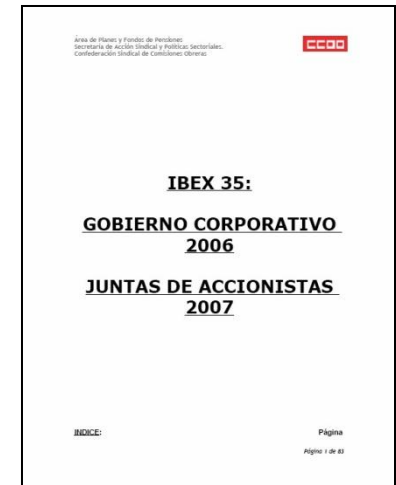
- CEO/Chair split, multiple- & cross- directorships
- Executive remuneration
- Board nomination

### E & S

- Sustainability reporting
- Environment (occupational health and safety)
- Respect of Core Labour Standards & HR
- Access to collective bargaining
- Other: e.g. diversity, privatisation, corruption, etc.

### Shareholder activism

- 'engagement' with management
- hostile AGM resolutions
- (litigation)



# The Stewardship of Workers' Capital

## Conditions to be met

- Portfolio mix:
  - *assets with ownership responsibilities (listed equity, private pools, special mandates)*
  - *defined benefit schemes allow for more aggressive portfolio composition*
- Governance
  - *Member nominated trustees in sufficient number*
  - *the larger the scheme, the better*
  - *"fiduciary fix" or handcuffs ? explicit integration of ESG conditionality*
- Asset management accountability
  - *Governance of asset managers, conflicts of interest*
  - *Access to the AGM agenda, shareholder minority protection, exercise of proxy voting rights*
- Trade union infrastructure
  - *Dealing with "strange bedfellows" alliances*
  - *Arms length relationship with trustees and trustee education!*
  - *Expertise to deal with regulatory complications (trust law, labour law, corporate law, securities regulation)*



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# The Stewardship of Workers' Capital

No one size  
fits all



	Pension funds		Worker Participation	
	AUM	Investment	Works council (& equiv.)	Board rep.
<b>Nordic</b>	30-100%	Quantitative restrictions, Insurance reg.	Widespread	Widespread
<b>Eastern</b>	1-13%		Limited	
<b>Continental</b>	50-130 %	Prudent Person, Trust fund	Widespread	Limited (SOEs, by-laws, ESOP)
<b>Dutch</b>			Limited	
<b>Anglo-Irish</b>			Limited	

### What the failures of activism pre-crisis tell us

- Active ownership is a means to an end, not an end itself
- “Short termism”, “long termism” need to be defined
- Self-regulation doesn't work

### Toward responsible activism

- Giving trustees full confidence that ESG & RI are compatible with their fiduciary duties
- Reversing the collective DB/hybrid > individualised DC trend
- Eliminating conflicts of interest in the asset management industry means splitting large financial conglomerates
- New paradigm on corporate governance & a positive approach to binding regulation !

# Using OECD (& others') global standards for responsible activism

