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Their Bark Is Bigger Than Their Bite: An Essay on *Who Bleeds When the Wolves Bite*

Jonathan Macey

I. INTRODUCTION

Delaware Chief Justice Leo Strine is of the view that America is in terrible shape.[1] Specifically, he identifies deep problems in the fabric of American society, which include "growing income inequality, inflated executive pay, job losses, [and] wage stagnation."[2] Having noted these problems, Strine lays a portion of the blame at the feet of activist hedge funds and the apparently misguided pension plans and university endowments that invest in such hedge funds.[3] In this Essay, I articulate Strine's worldview and argue that while his Feature in this issue of the *Yale Law Journal* is ostensibly about hedge fund activists, his real complaint is with modernity itself. Hedge funds are merely piling on.[4] Accord-

1. Leo E. Strine, Jr., *Who Bleeds When the Wolves Bite?: A Flesh-and-Blood Perspective on Hedge Fund Activism and Our Strange Corporate Governance System*, 126 Yale L.J. 1870, 1950 (2017) ("Median income has stagnated since the early 1970s. Productivity increases have slowed and wages never did fully experience the benefit of the rapid productivity increases of the last two decades. Economic growth is stagnant. The government has been compelled to provide giant subsidies to corporations engaged in risky commercial conduct."); *see also id.* ("Looking at the big and systemic facts from the perspective of an average American human investor, the world is not an optimistic place.").
2. *Id.* at 1951.
3. *Id.* at 1917-22, 1934.
4. *Id.* at 1951 (asking whether it adds "socially useful value for activist investors with short-term perspectives to put additional pressure" on American public corporations in light of the "vigorous international and domestic competition" that is "already acting" on these companies).

ingly, his proposed solutions, which focus largely on disclosure and reporting requirements,[5] are misplaced in the current debate.

On Strine's account, hedge funds are wolves, and ordinary "human" citizens bleed when these funds engage in activist corporate governance. Critical to this account are Strine's nostalgic views of the public corporation and the role played by the citizen-shareholders of what he describes as the "corporate republic."[6] Nationalism is also a concern, as Strine worries that, "with the globalization of not only product and service markets, but [also] stock ownership itself, corporations have increasingly lost any genuine national identity."[7]

This Essay argues that the maladies of job insecurity and income inequality that Strine identifies in his Feature are, fundamentally, due to the broad forces of globalization. Therefore, changing aspects of the corporate governance landscape, such as asking hedge funds to disclose more of their operations, will not remedy the situation. Part II of this Essay describes Strine's idealized historical view of the public corporation and its modern discontents. Part III casts doubt on the extent to which activist hedge funds can fairly be blamed for exacerbating the broad social problems that afflict the country and suggests that globalization and technological change are the real culprits. Part IV discusses Strine's thesis that workers who fund pension funds with their retirement savings may later find that these savings have been invested with activist hedge funds whose activism results in corporate downsizing that ultimately leads to the workers' unemployment. While this is undoubtedly true, I believe that retirees would want to invest their money in activist hedge funds even in light of this fact—as long as the hedge funds generated significant returns for the workers. In Part V, I argue that hedge funds have not been particularly successful in their activist investment strategies and that pension funds are moving away from investments in activist hedge funds. This observation undermines Strine's central thesis that corporate governance needs to focus more on human investors and that activist hedge funds, as well as the broader corporate governance failures through which they operate, represent a threat to the American workers. Rather, globalization will spell changes for these hedge funds that will facilitate long-term investment approaches. The reason for this outcome is that it is difficult—indeed virtually impossible—to beat the markets for any sustained period of time. Competition in the debts, products, and services markets forces corporations to do what hedge fund activists already pressure corporations to do: downsize and operate at the outer limits of their capabilities. My analysis shifts the blame away from activist hedge funds for the current hyper-

5. *Id.* at 1956-70.

6. *Id.* at 1873.

7. *Id.* at 1933.

competitiveness that characterizes the corporate world without denying that hyper-competitiveness is what characterizes this world.

II. THE GOOD OLD DAYS

Strine assumes that in the beginning, when "corporations were first chartered under general, not special, legislation," stockholders functioned as democratic citizens, holding managers accountable through elections and, occasionally, direct democracy.[8] In the good old days, "[s]tockholders were mostly human beings [who] invested for the long term, options for trading were limited, and they made their own voting decisions."[9]

According to Strine, activist stockholders in those days tended to be those who "had the longest-term stake in the corporation."[10] Additionally, corporate operators at all levels—from managers and directors to employees and stockholders—held connections to the communities in which the corporation operated, and "corporate managers were well but not lavishly paid."[11]

However, Strine contends that the loyalty of corporate citizens has since declined due to the "unmooring of corporate citizenship."[12] He laments that, upon purchasing shares of stock in a company, hedge fund activists now immediately become full-fledged citizens of the corporate republic in which they have invested.[13] Further, Strine argues that unlike the good old days, people with interests in a corporation are neither "tied to any natural conception of citizenship," nor bound to the community of the corporation.[14] Also regrettable is the fact that corporate activists are no longer long-term investors with an interest in stability but rather are hedge funds with an interest in changing business plans to "reap a profit over a period that can be as short as a handful of months."[15]

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8. *Id.* at 1910.
9. *Id.*
10. *Id.* at 1871.
11. *Id.*
12. *Id.* at 1932.
13. Strine bemoans the ease through which this process can now occur. *Id.* at 1928 ("[T]his corporate republic has a concept of citizenship that is truly remarkable in its liberality. There is no waiting period or application process to be a citizen, or even to be elected to the highest office of this republic; buying stock is all that is required, and you can come and go largely as you please.").
14. *Id.* at 1932. Instead of local connections, Strine opines that "so-called American corporations have a large international investor base and derive large portions of their revenues from offshore operations," which further reduces the investor citizenship. *Id.*
15. *Id.* at 1928.

III. WHAT IS WRONG WITH THIS PICTURE?

Strine's romantic vision of a golden past underpins the grim worldview reflected in his Feature. While it is highly doubtful that the good old days were quite as wonderful as Strine imagines them to have been, it is undeniably true that there have been seismic changes in the world since the early days of general corporate chartering. It is worth pondering why such changes have occurred.

In my view, the changes that Strine bemoans are the inevitable consequences of globalization in general and particularly of advances in information technology and connectedness that reduce the importance of physical distance for investors and managers. Because of technology, managers and hedge fund activists can now get information about a corporation's actions and performance from multiple sources around the globe virtually instantaneously, drastically reducing the importance of physical distance in corporate governance. Just as this has made it possible for managers to direct global enterprises from afar, so too have improvements in information flows and technology made it possible for financial analysts to evaluate relative corporate performance with greater precision and accuracy. When a company begins to underperform its peer group, the investor community will notice and pressure that company's management to improve performance. Activist hedge funds are only the most visible manifestation of a corporate governance infrastructure that puts corporate managers under constant and close supervision. To be sure, hedge funds have become more activist, but so have corporate boards of directors and other institutional investors.[16]

According to basic economic theory, technological changes lead to economic growth because they expand the scope of production possibilities.[17] Few areas have been affected more by technological changes than capital markets.[18] These changes in capital markets have profoundly influenced the patterns of share ownership in turn. Specifically, the ability of computers to receive, analyze, and transmit large amounts of data means that information about corpo-

16. *See* Yaron Nili, *Missing the Forest for the Trees: A New Approach to Shareholder Activism*, 4 HARV. BUS. L. REV. 157, 175 (2014) (noting increases in activist behavior in hedge funds); Roberta Romano, *Less Is More: Making Institutional Investor Activism a Valuable Mechanism of Corporate Governance*, 18 YALE J. REG. 174, 175 (2001) (noting the historical roots of institutional investor activism).

17. Susanto Basu et al., *Productivity Growth in the 1990s: Technology, Utilization, or Adjustment?*, 55 CARNEGIE-ROCHESTER CONF. SERIES PUB. POL'Y 117, 153 (2001) (finding that the "recent increase in the pace of productivity [in the latter half of the 1990s] does correspond to an increase in technology").

18. *See* Tom C.W. Lin, *The New Investor*, 60 UCLA L. REV. 678, 678 (2013) (noting the "sea change" that technology has brought to capital markets).

rate performance has become vastly more detailed over time.[19] It is now possible for investors, directors, and others to make very granular distinctions about how a corporation is doing in particular markets at particular moments in time. Technology is also making it increasingly easier and faster to compare the performance of multiple corporations and to make trading decisions on the basis of those comparisons. It is these changes, not the actions of activist hedge funds, that are the root causes of the ever-increasing pressure to improve corporate performance.

Strine's nostalgia is understandable under the circumstances. Take for example his claim that stockholders historically functioned as democratic "citizens" to hold managers, "the elected officials," accountable through elections, direct votes on important matters, and other checks and balances.[20] Unlike this idealized depiction, however, reality was a bit more complicated. Shareholders face a well-known agency problem because they necessarily entrust the companies in which they have invested to managers whose interests may diverge from their own.[21] Mitigating this problem is costly and requires investors either to exercise their exit rights by withdrawing from the corporation through selling their shares or else to use their limited voice to influence the company's operations by expressing their dissatisfaction and petitioning for change.[22]

Exit and voice are substitutes. As exit becomes easier, dissatisfied investors will more likely choose to exit and move on to different investments rather than exercise their voices to articulate their complaints and agitate for change.[23] As a result of technological improvements over time, stock markets have become more liquid and market depth has improved.[24] These changes have made exit

19. Michael D. Goldman & Eileen M. Filliben, *Corporate Governance: Current Trends and Likely Developments for the Twenty-First Century*, 25 DEL. J. CORP. L. 683, 703 (2000).

20. Strine, *supra* note 1, at 1910.

21. The agency problems inherent in corporate governance are well established. *See* Victor Brudney, *Corporate Governance, Agency Costs, and the Rhetoric of Contract*, 85 COLUM. L. REV. 1403, 1443 (1985) ("The prevailing structure of corporate governance gives corporate management substantial discretion to reward itself and to satisfice—that is, to limit its input at the cost of realizable corporate wealth."); Ralph A. Winter, *The Liability Crisis and the Dynamics of Competitive Insurance Markets*, 5 YALE J. REG. 455, 472 (1988) (noting that "[m]anagerial decisions . . . generally will not be made in the best interests of every shareholder in a corporation").

22. *See* ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES 39-40 (1970).

23. *See* Emeka Duruigbo, *Stimulating Long-Term Shareholding*, 33 CARDOZO L. REV. 1733, 1760-62 (2012) (noting the well-established shareholder preference for exit over voice when liquidity exists).

24. Pankaj K. Jain & William F. Johnson, *Trading Technology and Stock Market Liquidity: A Global Perspective*, *in* STOCK MARKET LIQUIDITY: IMPLICATIONS FOR MARKET MICROSTRUCTURE AND

from the corporation through the sale of securities a far more attractive option compared to voice in the form of corporate governance activism, at least for smaller or well-diversified investors. Similarly, as corporations have become larger and as markets have become more liquid, voice has become a less desirable option.[25] Simply put, because selling has become easier, exercising one's rights as a corporate citizen has become relatively less attractive. So again, economics and technological advancement explain the decline in the demand for the "republican election principles and elements of direct democracy" that Strine laments.[26] Hedge funds have simply moved into this empty space.

Technological change explains investors' shorter-term time horizon as well. As markets became more informationally efficient, share prices more quickly and accurately reflected information about future returns to investors.[27] This is because shares of stock are, after all, financial assets, and their current price reflects the market's unbiased assessment of the present value of the expected cash flows to investors.[28] In more efficient markets, shareholders do not have to hold onto their shares as long in order for the share prices to reflect the companies' actual economic values.[29] Long ago, shareholders may have had to invest for the long term because it might have taken a long time for share prices to reflect fundamental values. As markets have become more efficient, share prices reflect value more quickly, largely obviating the need for long-term investing.[30] Shareholders who do not work for the companies in which they are invested

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ASSET PRICING 287, 287 (2008) ("Computerization and satellite communication have transformed the industrial organization of stock exchanges and dramatically improved secondary market liquidity.").

25. The effectiveness of voice declines as a shareholder's control of a company declines, while the availability of exit increases as markets offer increased diversification and liquidity to shareholders. *See* John C. Coffee, Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor*, 91 COLUM. L. REV. 1277, 1287-88 (1991).

26. Strine, *supra* note 1, at 1910.

27. A market is informationally efficient if, with respect to a certain set of information about the assets that trade in that market, it is not possible to obtain trading profits by buying and selling in that market, where profits is defined as risk adjusted returns net of costs. *See* Michael C. Jensen, *Some Anomalous Evidence Regarding Market Efficiency*, 6 J. FIN. ECON. 95, 95 (1978) ("I believe there is no other proposition in economics which has more solid empirical evidence supporting it than the Efficient Market Hypothesis.").

28. The market's assessment is unbiased in the sense that trading profits can be made whenever the market price of a security is either too low or too high. As such, the market will not be biased in one direction of the other.

29. Jensen, *supra* note 27, at 95.

30. *See* David Min, *Corporate Political Activity and Non-Shareholder Agency Costs*, 33 YALE J. REG. 423, 448-49 & n.124 (2016) (contrasting the long-term interests of employees with the short-term interests of shareholders in efficient markets).

have no particular incentive to invest in a particular company for the long term, especially if other more attractive investments become available.

Information technology also explains what Strine apparently regards as the regrettable fact that activist hedge funds are opportunistic. He argues that hedge funds are not long-suffering shareholders who became dissatisfied with corporate policies and advocated quietly for a change in direction.[31] Rather they come in from the outside and then push for changes to realize profits over a period of several months to a couple of years at most.[32] To the extent that hedge fund investors are identifying undervalued companies and urging changes to increase their value, this shorter-term time horizon is a good thing. Undeniably, hedge funds often get it wrong.[33] Yet, even in those cases, their shorter-term time horizon serves to discipline the hedge funds by forcing them to realize any gains or losses associated with their activism within a relatively short period of time.

In earlier times, when it was hard for outside investors to obtain information about companies, they had to invest and become involved in governance and management merely to discover the nature of the problems afflicting a corporation. With the modern abundance of detailed financial information in publically available quarterly and annual reporting, institutional investors like hedge funds can identify and diagnose corporate pathologies *before* they invest. While the resulting dynamic may seem cold and impersonal, it means that outside activist investors face historically low costs of engagement. This allows the activist investors to realize efficiencies in the form of economies of scale and economies of scope by specializing in evaluating public reports to discover undervalued corporations and treating them as opportunities to obtain arbitrage gains.

In other words, activist hedge funds simply engage in the ancient game of risk arbitrage. Risk arbitrage is the business of purchasing undervalued assets and then working either to increase their value or to get others to recognize that their value already is higher than the value assigned to them by the market. Hedge funds are not doing anything that is different than what investors have been doing for decades.[34] They are simply doing it faster.

In addition to the technological improvements that increased market efficiency, other factors contribute to the problems Strine identifies. For example,

31. Strine, *supra* note 1, at 1928-29.

32. *Id.*

33. *Id.* at 1931.

34. *See* Dionysia Katelouzou, *Myths and Realities of Hedge Fund Activism: Some Empirical Evidence*, 7 VA. L. & BUS. REV. 459, 466 (2013) ("At its most basic level, hedge fund activism can be described as a recent variant of shareholder activism.").

stricter enforcement of legal rules barring insider trading has also reduced the value to investors of having close physical proximity to corporate headquarters. In the past, shareholders may have wanted to be close to the primary source of information about their company in order to avoid being surprised by new events that might affect the value of their shares. Rules barring trading on the basis of material, nonpublic information, however, have curbed the advantages of being a local investor. This result has shifted investor reliance to other sources of information to gain an edge in the market. I believe that as financial modeling and analysis have become more sophisticated, the demand for specialized expertise in evaluating corporate information and financial results has grown. It follows that hedge funds are merely part of this larger trend.

More broadly, globalization further contributes to these changes in the nature of corporate citizenship that Strine describes. As corporations have become increasingly multinational in marketing their products and services, it is unsurprising that they have attracted a correspondingly more international pool of investors. Moreover, as technology has made it possible for corporations to distribute information about themselves simultaneously to investors worldwide, investors' need to be physically close to the source of corporate information has diminished.

Thus, it is not surprising that the concept of citizenship in the corporate republic has become "remarkable in its liberality."[35] When Strine talks about this concept, he is apparently referring to the ease with which one can become a corporate citizen. There are no prerequisites such as residency requirements or employment in the corporation. Of course, existing shareholders are free to impose conditions on share ownership that make corporate citizenship more difficult. These conditions often come in the form of share transfer restrictions. But shareholders eschew such restrictions in publicly held corporations for a good reason. While it is not clear what sort of prerequisites to citizenship Strine is advocating for, no shareholder, regardless of whether she views herself as a net buyer or a net seller of shares, would benefit from a rule requiring a waiting period or the completion of an application process in order for potential investors to purchase shares with full voting rights. Indeed, it would reduce the shareholder's own liquidity in the market.

To summarize, this context of globalization and technological improvements challenges many of Strine's proposed solutions. For example, Strine argues in favor of greater hedge fund disclosure and reporting requirements so that "human investors, mainstream institutional investors, proxy advisory firms, target corporations, and other participants in our corporate republic can

35. Strine, *supra* note 1, at 1928.

understand an activist's overall economic positions."[36] However, given that the maladies he identifies are not catalyzed by hedge funds but rather by globalization, these reforms will miss the mark.

IV. STRINE'S BIG FACTS

Another important issue raised in Strine's Feature is whether human investors benefit from the investments of their pensions in activist hedge funds and, relatedly, from the changes these funds make in their employers.[37] He indicates that it is important to focus on more than what share prices are and whether companies targeted by hedge funds enjoy durable increases in their share prices after an intervention has occurred.[38]

Supposedly, a narrow focus on share prices misses what Strine would call the "bigger, more important" fact.[39] He argues that workers may well be putting their retirement savings in pension funds that then allocate those savings to hedge funds, which in turn launch activist interventions against the very companies that employ the workers who made the pension fund investments. Strine reasons that if the hedge fund activist's intervention causes the company to reduce staffing and thus causes the workers to lose their jobs, then activism harmed the workers even if it did result in improvements in the target company's share price.[40] Workers are also harmed when the hedge funds, in which their savings are indirectly and inadvertently allocated, underperform. And because hedge fund strategies often do fail in reality, it is a cruel joke that the workers lose twice—first when they lose their jobs as a result of hedge fund activism and second when their retirement savings underperform the market as a result of the hedge funds' poor investment records.[41]

However, as argued in the next Part, pension funds will naturally stop investing in hedge funds as markets become more efficient, alleviating Strine's immediate concerns. Specifically, hedge fund strategies are more likely to fail as

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36. *Id.* at 1956.

37. *Id.* at 1951-52.

38. *Id.*

39. *Id.* at 1951.

40. *Id.* ("[I]f competition in product and services markets has already squeezed out most of the slack, the likelihood that pressures that predominantly involve demands for corporate finance moves like leveraging up, spin offs, or mergers will create incentives for corporations to focus their energies on ways of making money that are also good for their workers and society seems less probable.").

41. *See* Julie Creswell, *Pensions Find Riskier Funds Fail To Pay Off*, N.Y. TIMES (Apr. 1, 2012), http://www.nytimes.com/2012/04/02/business/pension-funds-making-alternative-bets-struggle-to-keep-up.html [http://perma.cc/2XUW-94K4].

improved market efficiency makes it harder to identify arbitrage opportunities. But for the time being, Strine raises an interesting question: whether ordinary investors, whose pension savings fuel some hedge fund activism, would stop investing in activist hedge funds if they had enough information and could control the allocation of their retirement funds (instead of being compelled to delegate such decisions to their money managers). But the likelihood is that even ordinary investors would continue to invest in activist hedge funds if those funds generated outsized returns. To do otherwise would be self-sabotage. Further, Strine's assumption that workers' pension funds should cease to invest in activist hedge funds is flawed. Such a cessation in investment, even if conducted on a grand scale, might slow down the pace of globalization but creative destruction would still occur. Inefficient businesses would still fail, be forced to downsize, or otherwise become more efficient. Greater recognition of the "big fact" that pensioners are investing in activist hedge funds will not change that reality.

Again, the broader point here is that the harms afflicting Strine's "human investors" are rooted in the broad forces of globalization rather than hedge funds. Changing features of the corporate governance landscape is not going to alter this process.

V. A LESS UNHAPPY ENDING?

Happily, a careful review of the evidence—including the evidence cited by Strine—reveals that things are not nearly as bad as he seems to think. Further globalization and technological improvements will spell behavioral changes, both for hedge funds and the pensions that currently invest in them. These changes, in turn, will mitigate the threats Strine identifies.

As Strine recognizes, not all hedge funds are the same and some hedge funds manage to both outperform the market *and* improve corporate performance in ways that are beneficial rather than harmful to society. Specifically, there is "emerging evidence suggesting that activist hedge funds prepared to take a long-term position and work as fiduciaries to improve the performance of the companies they target achieve a better market reaction."[42]

I agree. However, Strine's observation should be taken to its conclusion. The efficient capital market hypothesis implies that it is virtually impossible for an activist hedge fund to outperform the market without illegally using material inside information unless they improve corporate performance. And markets

42. Strine, *supra* note 1 at 1908 & n.133 (citing activist hedge fund Pershing Square's intervention at Canadian Pacific, "one of the great corporate turnarounds in recent memory," which brought an experienced new CEO in to run the railroad).

are becoming more efficient over time as a result of the very meta-phenomena of globalization and advances in communications technology that I observed in Part III. As performance becomes more transparent, pressures will increase on corporate earnings. Hedge funds are only part of this phenomenon. Corporate managers who fail to run their companies to their full potential will find themselves under increasing pressure, with or without activist hedge funds.

Further, pensions will abandon those activist hedge funds that do not change. As activist hedge funds underperform broad market indices like the S&P 500,[43] pension fund managers will likely turn their attention to index funds that invest in actual companies that hire people, rather than hedge funds that fail in their efforts to beat the market on a short-term basis.[44] Much of the problem that Strine identifies, then, appears to be temporary as pension fund investors experience losses on their investments in hedge funds and those pension funds change their investment strategies. In 2014 for example, the largest U.S. pension fund, CalPERS (the California Public Employees' Retirement System), which had four billion dollars invested in hedge funds, decided to stop investing in hedge funds altogether.[45] This move is likely to influence other pension funds.[46] In the long run, pensions will follow the best return, which most likely will not be activist hedge funds. In other words, markets have a way of sorting these problems out over relatively short periods of time.

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43. *See* Burton G. Malkiel, *The Efficient Market Hypothesis and Its Critics*, 17 J. ECON. PERSP. 59, 77 (2003) ("A remarkably large body of evidence suggests that professional investment managers are not able to outperform index funds . . . ."); Nir Kaissar, *Hedge Funds Have a Performance Problem*, BLOOMBERG GADFLY (Mar. 24, 2016, 10:23 AM), http://www.bloomberg.com/gadfly/articles/2016-03-24/hedge-funds-have-a-performance-problem [http://perma.cc/R5ZX-ZWU]; Walter Kurtz, *The 20-Year Performance of Hedge Funds and the S&P 500 Are Almost Identical*, BUS. INSIDER (Aug. 12, 2013, 8:43 AM), http://www.businessinsider.com/hedge-funds-and-sp-500-nearly-identical-2013-8 [http://perma.cc/KU8U-K3X3] ("Hedge funds continued to underperform the overall US equity market . . . .").

44. See Timothy W. Martin, *What Does Nevada's $35 Billion Fund Manager Do All Day? Nothing*, WALL ST. J. (Oct. 19, 2016), http://www.wsj.com/articles/what-does-nevadas-35-billion-fund-manager-do-all-day-nothing-1476887420 [http://perma.cc/3M9K-YXL3] (describing the Nevada Public Employees' Retirement System, which invests exclusively in passive funds and generates strong returns for its investors).

45. Dan Fitzpatrick, *Calpers To Exit Hedge Funds*, WALL ST. J. (Sept. 15, 2014), http://www.wsj.com/articles/calpers-to-exit-hedge-funds-1410821083 [http://perma.cc/7B8M-8E9T].

46. *Id.* (predicting that the shift away from hedge funds by CalPERS "will likely influence others because of its size and history as an early adopter of alternatives to stocks and bonds").

CONCLUSION

Strine's world is a bleak dystopia in which those "human investors" saving for retirement "are not so much citizens of the corporate governance republic as they are the voiceless and choiceless many whose economic prospects turn on power struggles among classes of haves who happen to control the capital—of all kinds—of typical American investors."[47] The point of this Essay is not to refute this claim, but rather to put it into context. The forces that focus managerial attention on share price returns are global in nature and appear to me to be the inevitable consequence of changes in information technology that make it easier to gather, analyze, and act on information about corporate performance. They are much broader than the comparatively narrow topic of corporate governance.

Workers' retirement savings should be invested in the assets that offer the highest returns available at the appropriate level of risk for such investors. It is implausible that the fiduciaries who invest money on behalf of retirees are to blame for the increasing uncertainty that plagues retirees and other investors. Accordingly, corporate governance reforms, particularly those that further emphasize disclosure, will not solve Strine's issues. Rather, the inability of activist hedge funds to beat the market will likely and naturally correct the course.

Jonathan Macey is the Sam Harris Professor of Corporate Law, Corporate Finance and Securities Law, Yale Law School.

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47. Strine, *supra* note 1, at 1872.