WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Hermann Geiger

Group General Counsel & Member of
the Group Management Board, Swiss Re

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THE SPEAKERS

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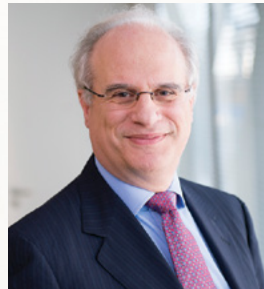

Mark Bergman
Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP

Gregory Astrachan
Partner, Willkie Farr & Gallagher LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished guest of honor's personal accomplishments in his career and his leadership in the profession, we are honoring Hermann Geiger, Group General Counsel of Swiss Re, with the leading global honor for General Counsel. The Swiss Re Group has been a leading global wholesale provider of reinsurance, insurance, and other insurance-based forms of risk transfer for more than 150 years. His address will focus on key issues facing the General Counsel of an international insurance corporation. The panelists' additional topics include systemic cyber risk; governance; M&A; insurance regulations; and litigation.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

Jack Friedman
Directors Roundtable Chairman & Moderator

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Hermann Geiger

Group General Counsel & Member of the Group Management Board, Swiss Re

Hermann Geiger was appointed Group Head Legal & Compliance and Group Chief Legal Officer of Swiss Re in January 2009, having joined Swiss Re as a Regional General Counsel Europe following the acquisition of GE Insurance Solutions in 2006. As a member of group management he is responsible for Swiss Re's legal and compliance operations worldwide.

Mr. Geiger previously served as General Counsel Europe and Asia in the insurance business of General Electric Company. Before then he worked with various major law firms, focusing on financial services transactions and regulation, capital markets, corporate matters, and litigation. He also served as a member of the management and supervisory boards of various GE and Swiss Re group entities across Europe.

Mr. Geiger is a qualified attorney-at-law and holds Ph.D. and LL.M. degrees in law, as well as a Ph.D. degree in economics and political sciences. He publishes regularly in the areas of compliance, regulation, public policy, corporate and business law. Mr. Geiger has been active in a number of other professional pursuits and serves on several non-profit advisory boards and legal councils.

He was born in 1963 and is a German citizen.

Swiss Re Group

The Swiss Re Group is a leading wholesale provider of reinsurance, insurance and other insurance-based forms of risk transfer. Dealing direct and working through brokers, its global client base consists of insurance companies, mid-to-large-sized corporations and public sector clients. From standard products to tailor-made coverage across all lines of business, Swiss Re deploys its capital strength, expertise and innovation power to enable the risk-taking upon which enterprise and progress in society depend. Founded in Zurich, Switzerland, in 1863, Swiss Re serves clients through a network of over 60 offices globally and is rated "AA-" by Standard & Poor's, "Aa3" by Moody's and "A+" by A.M. Best. Registered shares in the Swiss Re Group holding company, Swiss Re Ltd, are listed in accordance with the Main Standard on the SIX Swiss Exchange and trade under the symbol SREN. For more information about Swiss Re Group, please visit: www.swissre.com or follow us on Twitter @SwissRe.

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JACK FRIEDMAN: We want to welcome everyone. I am Jack Friedman, Chairman of the Directors Roundtable.

We are a civic group that organizes programs for Boards of Directors and their advisors worldwide. We've done 800 events in 24 years.

The series of events honoring General Counsel arose from the comments of corporate directors, who have told us that little positive is ever said about any corporation. We are not a PR firm or a chamber. We are not advocating business; we are organizing business education. Recognition of the good things that corporations do and of their legal departments is very important. We are very pleased that Swiss Re and their General Counsel, Mr. Geiger, accepted our invitation.

Hermann will be giving his opening remarks, and then we have four Distinguished Panelists who will introduce individual topics followed by a Roundtable discussion. If there is time remaining, we will take a few questions from the audience. A full-color transcript of the event will be made available to about 150,000 leaders globally.

I would like to briefly introduce our Distinguished Panelists: Katherine Coates with Clifford Chance; Mark Bergman with Paul, Weiss; Gregory Astrachan with Willkie Farr; and Stephen Tester with CMS Cameron McKenna. We also invited Barry Ostrager of Simpson Thacher in New York, but he had to change his plans at the last moment. One of his long-term colleagues is a finalist to be selected as a judge on the highest court in New York, the most prestigious American state court. He wanted to give her assistance during this important part of her career. We thank Simpson Thacher for their support of this program as well.

Hermann Geiger has a very interesting background. He is originally from Germany, where he worked in the private sector at GE and in the financial services industry for a number of years. He has been a scholar and an assistant professor in his very distinguished career. Without further ado, I introduce our Guest of Honor, Hermann Geiger with Swiss Re. Thank you.

HERMANN GEIGER: Good morning, everyone, and thank you, Jack, for the kind introduction. I'm not one to exaggerate my accomplishments, but in that case, you've done it for me, so thanks again, Jack.

It's an honor to be with you here today, with such a distinguished crowd of participants and speakers. I know you all have incredibly busy diaries; December is probably one of the busiest months in the year, certainly in reinsurance, so I'm really humbled by such a big turn-out.

Before I launch into my speech, I wanted to extend my sincere thanks to the members of Swiss Re's Global Legal & Compliance Team. In many ways this is a team award. As a business, we face so many challenges we can only master together, and I'm really proud of my colleagues' achievements, their dedication, and the excellence that they display every day. The same holds true for our partners — our external lawyers — many of whom have become friends of the firm over the years.

To set the context for the discussion this morning, I thought I'd address three topics: 1) Swiss Re and the current market environment; 2) some of the legal and regulatory megatrends that affect our business; and 3) the role of the Chief Legal Officer in the reinsurance sector.

To kick it off, I'd like to share with you a recent quote from former Chief Justice of the Delaware Supreme Court, Norman Veasey. He said, "The CLO's [Chief Legal Officer's] role is frequently interesting, always multifaceted, sometimes lonely, and potentially perilous." That's an interesting role description, isn't it? When I read that, I wonder who would want to have that job. The question is: is it a fair description, and has it always been like this, particularly in reinsurance?

Let me jump back to the year 1995. In that year, I left private practice to join GE Capital Services, which, at that time, had just acquired some European reinsurance companies. During my first two

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or three days, I bumped into this veteran underwriter, a person who really had seen everything and knew best. He said to me something along the lines of, "Boy, we don't really need lawyers here; you need to understand that reinsurance is a business where we trust each other."

I didn't quite understand what he was trying to say to me, but shortly after, I found out that law didn't really play a significant role in traditional reinsurance. It used to be described as a gentleman's business, where commercial customs like "utmost good faith" and "follow the fortunes" were applied to the whole business relationship; where disputes would be resolved amicably, or in really rare cases, by ad hoc arbitration; and where regulators didn't really intervene in business matters. Our veteran underwriter, in the end, got to know the lawyers the hard way, when we rolled out GE's very strict and comprehensive compliance framework throughout Europe and Asia at the time when most people in the sector hadn't even heard of the term "compliance."

Altogether, I spent almost twelve years with GE, a company which puts so much emphasis on topics like leadership, operational excellence, project management, Six Sigma — a great learning opportunity for a lawyer, indeed.

Let's jump ahead twelve or so years from 1995. During that period, I lived through a number of acquisitions as a buyer's side counsel, but in 2006, when Swiss Re acquired GE Insurance Solutions, I had the opportunity to see what it feels like to be bought. An interesting experience if you see it from both perspectives. Fortunately, this was a great experience; my new colleagues at Swiss Re impressed me all along, and I knew I was joining a terrific company.

During this whole period, coming back to Judge Veasey's comment, I can tell you that work was multifaceted and interesting — but it got even better. Some two years later, pretty much at the peak of the financial market crisis, I was appointed Swiss Re's Group Chief Legal Officer. I'm sure many of you will remember how difficult corporate life was for so many at that time; also for Swiss Re.

> "Swiss Re, as the name suggests, is a very traditional Swiss company. It was founded in 1863. ... There are not too many companies which have been listed since 1869. Swiss Re is one of them."
> – *Hermann Geiger*

The company suffered in many ways. From a $1.2 billion mark-to-market loss arising out of two credit default swaps; from a securities class action complaint filed in New York seeking damages in the billions range; from a capital depletion, also in the billions range; and from a share price decline, where the share price fell from 80 Swiss francs by the end of 2008 to the all-time low of 11.88 Swiss francs in March, 2009 — a bleak time, indeed.

Thanks to the right strategic priority setting, and the good and hard work by many people, the firm recovered very quickly, and needless to say that Legal & Compliance was front and center in all these remediation efforts.

Under the leadership of the Board, raising transparency and accountability became the guiding operating principle for the whole firm. In this spirit, we restructured the whole group in 2011 by putting in place a new holding company with distinct business unit structures underneath by way of a public exchange offering in Switzerland. Alongside of that, we put in place a new governance framework for our 300 or so legal entities globally.

Today, Swiss Re is probably stronger than ever before. Let me share with you a couple of numbers. Swiss Re has a very strong capital base. Currently, we have more than USD$10 billion above Standard & Poor's AA threshold. In terms of our 2013 financials, revenue was $29 billion, profit was USD$4.5 billion. We are a significant investor. Our invested assets are in excess of USD$200 billion. We have about 12,000 employees in more than 70 offices around the globe, and in Legal & Compliance, we have a diverse global team of professionals, about 200 in more than twenty locations, with the main hubs being London, New York, Zürich, and Hong Kong.

Swiss Re, as the name suggests, is a very traditional Swiss company. It was founded in 1863, so personally, I had the privilege of being part of the 150-year celebrations the firm had across the globe last year and this year. There are not too many companies which have been listed since 1869. Swiss Re is one of them.

This all said, there is no doubt that the firm is set for success for years to come, but the market environment is becoming increasingly difficult. Let me highlight two aspects before I move on to law and regulation.

One is the artificially low interest rate. Like any other significant and long-term investor, Swiss Re is negatively affected by sustained low interest rates, lowering our return on capital.

The other is the commoditization of capital which is creeping into the market. This trend is well described by the rating agencies' negative view of the sector, which has changed quite a bit over the last twelve months. A.M. Best, Moody's, and Standard & Poor's consider the oversupply of capital and slowing demand as the most prominent risk factors. What they mean in particular is the flow of alternative capital provided by hedge funds, pension funds and private equity into the reinsurance markets, primarily in U.S. property business.

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The combination of low interest rates and capital oversupply has led M&A activity in the sector to pick up, with deal volume actually increasing by 30% for the first half of this year.

Enough on history, Swiss Re and the market place; let me now turn to some of the legal megatrends affecting our business.

When Jack said that this meeting will be recorded and sent to about 150,000 leaders and lawyers, I immediately thought I need to give what sometimes sounds like a Miranda warning. My remarks are personal and nothing I will say can be used against Swiss Re!

I would like to also say this: I am not opposed to the idea of market regulation at all. I rather believe in the need for strong and effective regulation. My academic work over many years proves that. But I do observe some exaggeration, some worrying trends, which I would like to comment on here today.

What exactly are these megatrends? Let me highlight five briefly. My megatrend #1 is the frequency and quantity of law and regulation, a trend which is an obvious one, and I'm sure all of you here in the room are aware of the proliferation of rules globally. This was different not so long ago. We jump back in time, again, into the '80s. Back then, I was a student and a researcher, and had started to keenly follow the evolution of regulation in the entire financial services sector.

In the '80s, market liberalization and market opening were the name of the game in financial services, and in its White Book of 1985, which was a foundation for the Ph.D. thesis I was writing then. The EU Commission stated that fewer and simpler regulation will lead to a raised level of competitiveness; therefore, higher productivity, more efficiency and lower prices overall. There was a belief that less regulation is better.

We're now in a completely different world, indeed. Deregulation and light-touch regulation was yesterday. The whole industry is swamped with a flurry of new laws and directives in response to the G20 agenda, like Dodd-Frank in the U.S., and multiple new or revised directives in the EU. The same is also true on a national level, where insurance supervisory law used to be fairly stable over many years. The Insurance Supervision Act in Germany, for example, has been amended more than thirty times since 2007.

I do consider myself as an end user of regulations. I've got to work with the stuff on a daily basis, and I know that this trend creates more uncertainty than clarity. Every day I feel the significant cross-sectorial and cumulative impacts on our business.

Megatrend #2 actually points to a contradiction in the regulatory landscape, which is global harmonization vs. local protectionism. Let me elaborate. Various international bodies keep pushing for globally aligned regulation, which, for sure, is a very important goal — a goal which the whole industry is supportive of. Just last month, the G20 met in Brisbane at their summit, where they announced the main elements of a broad regulatory reform in response to the financial crisis.

Conversely, we see national regulators increasingly prioritizing their local agenda. Expressions of this trend are manifold, like the introduction of super-equivalent standards, requirements to localize businesses or assets, just to name a few.

Personally, I am concerned that regulators will be unable to agree on new global standards due to their jurisdictional self-interest and the related difficulties in aligning global and local objectives.

As a result, I rather observe a growing regulatory fragmentation than harmonization in my daily practice which, inevitably, has a quite negative impact on any global business model. Reinsurance, by its very nature, is a global business model.

Banking regulation is my megatrend #3. Banking regulation seems to be becoming the regulatory role model for the insurance sector. The problem here is a perception that banking regulation is way ahead of insurance regulation, and that all financial institutions — a legal term which was introduced a couple of years ago to cover both banks and insurers — require similar regulation. This is all happening against the background of many insurance supervisors merging with existing bank regulators or central bank functions. As a result, the approach to insurance and insurance regulation is likely to take on some bank-centric methodology, even though the banking model is very different from the insurance model. Still, we are moving in that direction, and I observe this trend in various areas, the most notable one being the designation of nine insurance companies as so-called "global systemic important insurers."

I come to my megatrend #4, which is what I describe as the paradoxes of principles-based regulation. There was quite a lot of excitement about principles-based regulation initially,

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mainly driven by the assumption that it would give more leeway to run businesses at lower cost and with less bureaucracy.

In a communication of 2007, when the European Union Commission explained its proposal for the Solvency II directive, it said that insurers will be given more freedom — that is, they will be required to meet sound principles rather than arbitrary rules. This was an interesting statement. Now people realize that the principles are being complemented by so-called "implementing measures" and administrative guidelines which are often highly prescriptive and detailed, indeed. Generally, we see more rules today than ever before. In my opinion, the Solvency II directive has been excessively damaged in this regard.

Last, but not least, megatrend #5 is a very alarming one. It is the increased criminalization of regulatory statutes and business conduct. Criminal liability for board members, managers and employees is nothing new, as illustrated by the traditional and fairly long list of topics like securities laws, bribery and corruption, antitrust, anti-money laundering, trade controls — you name them. But it does not really end there, and is currently reaching new heights — or perhaps I should rather say new depths.

Let me point to three recent examples. I never would have thought I'd be spending so much time on executive compensation issues as I have done in the past years — however, not my own compensation! In March, 2013, voters in Switzerland approved a referendum known as the "Popular Initiative Against Rip-Off Salaries." It is an interesting title to begin with. Like in some other countries, the referendum called for a ban on certain forms of executive compensation and an increase of shareholder rights. That is nothing unique.

What is unique, though, is the introduction of criminal sanctions. The Swiss Federal Constitution now includes a new section in Article 95, which makes noncompliance with the new requirements a criminal offense which I quote now: "shall be sanctioned by imprisonment for up to three years and a fine of up to six years' remuneration."

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>
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Another interesting example I'd like to point to is from Germany. It is the Act on the Separation of Risks and Restructuring and Winding Up of Credit Institutions and Financial Groups. Now, I would not normally expect to find insurance regulation under this heading. But Article 4 contains interesting provisions that amend the German Insurance Supervisory Act in two different and important ways. Firstly — illustrating the point I made in relation to principles-based regulation — it includes a very far-reaching and prescriptive regime describing the expected risk management approach. Secondly and more importantly, it makes the violation of said risk management duties jeopardizing the company a criminal offense, which is punishable with a maximum of five years' imprisonment.

I find the legislative reasoning particularly telling. It says that these provisions create sanctions for mismanagement that will help to prevent future corporate crises and their associated negative effects on society and the economy. I'll let you conclude how reasonable this reasoning is.

A completely new level is currently reached in the proposed Senior Persons Regime for Banking Institutions here in the U.K. It seeks to introduce criminal sanctions for reckless misconduct in managing banks. It also seeks to reverse the burden of proof for both civil and criminal sanctions. In other words, there's a presumption of responsibility unless senior persons can prove otherwise, which obviously calls into question compatibility issues with the European Convention on Human Rights.

Anyway, no human rights for bankers is an interesting proposition — probably not one to speak about too loudly here in London, or in any other banking hotspots, for that matter.

The corresponding proposed regime for insurance was announced — as recent as last week. I am glad to see that it deviates, actually, in important aspects, from the principles put forward for senior persons in banks. This is one of the few and happy exceptions to my megatrend #3.

Now, all these trends need to be viewed against the backdrop of a new enforcement reality. There are a couple of points to be made. First, it's fair to say that more actions, stricter penalties, and higher fines have become the norm. The Securities & Exchange Commission published its fiscal year report in October, which serves as a good example.

Second, in the same report, the SEC points to another important change, where they say, quoting now, "Hold attorneys, accountants, and compliance professionals accountable for the important roles they play." These so-called gatekeepers are increasingly being implicated in enforcement proceedings, and face criminal sanctions themselves. Recent criminal indictments in the U.S. suggest that a gatekeeper might be held accountable for failing to stop misconduct, even where he or she had no role in the wrongdoing.

Third, it sometimes feels like we are in a regulatory race to the top, where the rule of the law is being changed through enforcement

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cases against individual companies. An often-quoted interview of the Financial Conduct Authority Chief Executive from 2012 summarizes it nicely when he said, "The key difference between the future and now — and forgive me for being scary in my use of analogy — is we are being given the power to shoot first and ask questions later. Today's approach is we find a problem and do lots of analysis, then we publish a set of draft rules and do a cost benefit analysis, we consult with the industry.... We have got to reverse that process."

I could go on with some other trends, but let me stop here and ask what all these changes in law, regulation, and enforcement mean in practice. The point I'd like to make is that senior decision-makers' jobs today are far different than they were just a couple of years ago. The changes come from almost every corner, in the form of said legal trends, said enforcement trends, shareholder activism, and a media which makes corporate failing front-page or 24/7 news. It's just so much easier to get into the spotlight in today's environment, and addressing all the competing expectations requires management today to be more right than right and purer than pure.

All of this has obvious repercussions on the role of the Chief Legal Officer, which brings me back to Judge Veasey's view that "the CLO's role is frequently interesting, always multifaceted, sometimes lonely and potentially perilous."

I totally agree with this sentiment when I look at what I'm confronted with and supposed to do day in and day out. But I let you be the judge.

Would you consider the following role description to be multifaceted and interesting? You deal with the board on strategic matters and corporate governance subjects. You are in a strategic business partner role as part of the group executive management. You are the manager of a sizable department. You are a creator, reviewer, and

spokesperson on corporate policies, compliance, and business ethics. You are a risk manager working on early warning systems to help the firm stay ahead of emerging rules, public policy and important country risks. And besides all of that, you are a legal advisor, a dispute manager and a transaction facilitator whenever needed.

In interviews, particularly when I like the candidate, I tell people what a great company Swiss Re is, delivering real value to policyholders, societies and governments in difficult situations. Then I move on to say that Swiss Re is probably the best place for a lawyer or a compliance professional to work, and that's because they are pretty much needed everywhere in our business and along the whole value chain. Why is that? Because we sell legal products in a highly regulated environment; we run very large and complex legal entities; and we have many interesting and exciting corporate projects all the time. When I say all of that, I really mean it — this is no lip service.

What I do not tell them is that my role is sometimes, indeed, a little lonely. As the Chief Legal Officer of the firm, you tend to get the most tricky and complex questions to answer, often well beyond the law. There is no one else who can make these difficult decisions for you.

Finally, I agree with Judge Veasey's statement that the CLO's role is potentially perilous. First of all, not finding the right answers to the tough questions exposes you to risk. The buck doesn't stop there, as we heard before: the Chief Legal Officer is the guardian of corporate integrity, and is expected to address misconduct pro-actively where he or she sees it.

Lastly, there can be friction, as hard decisions may yield tough conversations. But going along to get along is not an option.

As a global legal and compliance department, we do recognize our gatekeeper responsibility, and also do a lot to support executive management in promoting the firm's values. At a company level, Swiss Re's efforts to promote sustainability, corporate governance and ethics have been widely recognized.

Just recently, Swiss Re was named as the insurance industry's sector leader in the Dow Jones Sustainability Indices for 2014. This is the eighth time since 2004 that Swiss Re has led the insurance sector in these rankings. Ethisphere has listed Swiss Re in its 2014 "World's Most Ethical Companies" ranking, and Swiss Re has earned this recognition seven of the eight years this program has been in existence.

Let me close my remarks on this positive note with a quote from management theory: "Anything that works will be used in progressively more challenging applications until it fails." Hoping that this theory has no application in law, I will make the point that the next couple of years will be critical in the development of global insurance regulation, as will be the active contribution by the industry and the legal profession into an informed debate.

Thanks for your attention; thanks again to my colleagues and partners for your support and your friendship over many years.

JACK FRIEDMAN: I'm overwhelmed with the number of issues that you raised.

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HERMANN GEIGER: Jack, this is the feedback I sometimes hear from my colleagues — I can create complexity!

JACK FRIEDMAN: As a matter of fact, I find what you said *not* complex. However, the number of issues that you raised is just remarkable. You mentioned Norman Veasey, whom we have hosted a number of years ago when he was the Chief Justice of Delaware. I asked him about an outside law firm having a partner sit on the client's board while doing active work for a corporation. "Is that okay under Delaware law?" Ten, fifteen years ago he said that when he was in private practice, he sat on client boards, and never found that he had a conflict between his board position and his law firm's work. His answer might be entirely different now. I assume that in Europe, law firms don't have a partner sit on boards if they're giving the company legal advice.

HERMANN GEIGER: I can understand why you ask this question. To keep it simple, I am only talking about Switzerland now. There, as a matter of fact, we see a number of lawyers in private practice sitting on a large number of company boards, so it is quite usual and accepted. To my knowledge, their law firms, which often tend to be large firms, are not precluded from providing legal services as a result of one partner serving on a company board. Conflicts of interest, where they arise will be addressed on a case-by-case basis. This is different in the U.S. U.S. law firms, certainly Wall Street firms, would have a policy not to send their partners into company boards, just to avoid the issue to begin with. Personally, I think this is the right policy for a law firm to take.

JACK FRIEDMAN: Before we go on to the other speakers, I would like to focus on your law department, to give them credit and talk about what they do.

Could you tell us a little bit about how your law department is organized? Also, how do you relate to your outside law firms?

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>
> *– Hermann Geiger*

HERMANN GEIGER: We have a number of them sitting here in the room! The first thing you need to understand is that we have many lawyers outside of the Legal & Compliance Department, like in Tax, Claims, and Contracts, just to name a few. What we refer to as the Legal and Compliance Department is really the core team for the corporate, regulatory, transaction, dispute, and compliance work that we do.

The way we have organized our function is such that we make a distinction between centers of excellence versus business General Counsel functions. Swiss Re has three distinct business units: Reinsurance, Corporate Solutions for Commercial Direct Business, and Admin Re, primarily here in the U.K. Each one of these business units has a business unit General Counsel with a dedicated team of professionals. They are there to serve these three business units.

In addition, we have global corporate functions with centers of excellence in the area of corporate and capital market transactions, dispute management and resolution, and compliance.

Swiss Re's business is global, as I mentioned before. We write about 40% of our business in EMEA, 40% in the U.S. and Latin America, and the rest in Asia Pacific. This is also pretty much how our resources are split globally.

JACK FRIEDMAN: One of the administrative choices that General Counsel have is whether to organize the legal efforts locally or globally.

Do you have any advice on the issue of organizing global assignments?

HERMANN GEIGER: I will say that there is probably nothing like the perfect organization structure. What matters most is having the right people. I used to say that good people survive bad structures but good structures don't turn bad people into good ones. The structures should be conducive to what we do, but there are options. The option we have found is that we take a very business-centric and also regional/local approach as far as the business General Counsel teams are concerned. But I'm a firm believer that complex transactions and large disputes should be run and dealt with only by the experts in these areas, irrespective of their location. That, in my view, is really critical to success and also explains our hybrid structure and approach.

JACK FRIEDMAN: How does the legal department work with the business side to make them more conscious of compliance and other issues?

HERMANN GEIGER: It's actually not difficult for us to make our inroads into the business. There is a great culture in the company, both in terms of involving the lawyers, and the compliance people. The other point to make is that each one of my business General Counsels have a seat on the table with the respective business management, including the business CEO, client managers, underwriters, etc. We hear at all levels what is going on; we are engaged and involved in strategy development and strategy implementation. And we have business policies and processes which require the involvement of Legal & Compliance.

On the compliance side, we have formalized reporting lines into the audit committees at both Group and subsidiary level. Content-wise, things are getting increasingly

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complex. You see a development that it's becoming virtually impossible for employees to understand every single policy and guideline which large corporations usually put in place.

What do you do in terms of simplification, and how do you make sure that people comply? Inspired by a book one of my former superiors, Ben Heineman, wrote a couple of years back, we have run *High Performance with High Integrity* dialogue sessions with about 1,800 Swiss Re managers. In this book, Ben outlines the whole theme of compliance culture and the need for companies to make sure that people feel comfortable to speak up, raise issues, and generally do the right thing.

Informed by this spirit, we run these dialogue sessions in order to instill a mental road map on people, which works everywhere and all the time. This is a mental road map whereby integrity comes first; people ask when in doubt; and they raise issues when and where they see them. That was not just a web-based training, but really interactive. We talked about real cases, dilemmas, and the tough questions where the answer is neither easy nor obvious. From these conversations, we could also see quite nicely where people's risk tolerance might be, how they would think about the Group policy versus the local customs, and how they would think about the whole notion of driving global standards of behavior and integrity, irrespective of what the local culture may say. It was very interesting. This is a journey without end, so we keep doing that. I found this, personally, quite effective, also for Compliance, to become much more visible and real with the businesspeople.

JACK FRIEDMAN: Thank you. You raised a number of very broad and important issues which we will follow up now with the panelists.

I'd like to have Katherine Coates of Clifford Chance speak, and she'll introduce her topic.

KATHERINE COATES: Thanks, Jack. First of all, I'd like to congratulate Hermann on his award. It's richly deserved — particularly, at the current time, where the role of General Counsel is, as you've heard, complex, lonely, and potentially dangerous. I hope you're not feeling lonely today, Hermann, because you do have a number of friends in the audience! We are all here to support you. In fact, as you were talking, I was recollecting that we've known each other since about 1995. I've had the privilege of supporting Hermann on both the buy side and the sell side of transactions, and a lot of things in between. I would agree with his general conclusion that the role of General Counsel has changed beyond recognition, and is certainly one that when you're offered the job, you would stop and think about very closely before accepting.

Hermann's presentation demonstrates just how important regulatory risk is now for international financial services businesses, and how much time a General Counsel and his team need to devote to keeping on top of local, regional, and global regulatory developments and assessing their impact on business strategy.

I want to try and build, in five or so minutes, on two areas mentioned by Hermann. First, the topic of regulatory risk and the importance to the sector of balanced regulation; and secondly, a few words about trends in M&A in the insurance sector.

Risk is an area which Clifford Chance has been advising our clients on extensively over the last twelve months. We most recently worked with the Economist Intelligence Unit on a report covering risk, called "View From the Top," that gives a board-level perspective on current business risks and involved us surveying about 300 directors around the world, representing all sectors of global corporates, including a number of people in financial services. We explored questions such as the ethical and moral issues around tax; whether the burden of risk is preventing the pursuit of business opportunities; whether increased

liability of directors is endangering board recruitment; and the difficulties of instilling a common approach to compliance and risk across global organizations, as Hermann was just describing.

It was clear that in most sectors, business risk is now much higher on the boards' agenda than a few years ago. Insurers are well ahead of non-financial groups, given that risk is part of their DNA, and that the regulator is increasingly focusing on risk. It makes good business sense, as well as cutting capital costs.

We also asked participants to identify key emerging risks. After the expected financial risk which came at the top of the list, most people focused on reputational risk. As Hermann mentioned in the context of the current approach of the media and growth in social media, reputation is a key issue.

Most of the other emerging risks noted by our participants, and particularly those in the financial services sector, were all regulatory and political. Firstly, political interference, with the USA ranking as the highest-risk country in this respect, followed by Russia, China, India and the U.K. Secondly, regulatory enforcement with the increase in criminal sanctions and actions against individual management was mentioned a lot,

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including, as Hermann has mentioned, the latest example in the U.K. of a new liability regime for bank senior management.

The third area identified was extraterritorial regulation, such as sanctions, anti-bribery and money laundering, and privacy and data protection, with more stringent regulation expected on this in Europe in the next few years.

Finally, most participants commented on the complexity of the regulatory landscape and the continuing inconsistencies between countries, regions and sectors, which are particularly challenging for global financial institutions.

The move towards more consistent global regulation through initiatives like the IAIS global standards is welcomed, but not so the multi-layered approach to regulation being imposed on GSIIs, SIFIs and other internationally active players, nor the prolonged uncertainty and expense associated with Solvency II in Europe.

Everyone would agree that there's a need for strong regulation. That's accepted, especially after the market failures in 2008. Most people would agree that this involves looking at risk and looking at the individual responsibilities of senior management. Talking to our clients in the sector — and as you heard from Hermann this morning — there is now, however, significant concern that the regulatory balance may have shifted too far in favor of financial prudence and consumer protection, and away from supporting innovation and investment in the sector, and that generally, the regulatory burden on firms is too great.

As Hermann stated, there is also too much regulatory read-across from banking into insurance. A lot of us spend our time trying to explain to regulators that insurers are different from banks. It's actually quite helpful to see that the PRA has recently decided not to apply all the senior management liability provisions that they will apply in the banking sector across to insurers. It's also interesting

"First, it's fair to say that more actions, stricter penalties and higher fines have become the norm." – *Hermann Geiger*

to see that the FSB and the IAIS are taking a bit more time to assess the specific criteria to be used to judge global systemic importance for reinsurers. Generally, however, there is still a degree of lazy thinking around assuming that the same rules should apply to insurance as apply to banks.

Striking the appropriate regulatory balance in a number of areas will be important in the coming years to maintain a healthy outlook for local and international insurance business. Firstly, we need to ensure that there's adequate prudence and security whilst enabling insurers to offer value and choice to consumers and, of course, a reasonable return for their investors. Risk-based capital as a concept is sensible, provided that it doesn't result in unnecessary additional layers of prudence and cost.

Secondly, ensuring adequate consumer protection without sacrificing innovation, competition, and consumer choice, is important.

Both conduct and prudential regulation, if taken to extreme, could result in insurers reducing innovation, transferring risk back to their customers, or being slow to respond to emerging risks. We've already seen insurers moving towards "capital lite" products in the life insurance and savings area. There's also already some nervousness from U.K. insurers about creating alternative products to annuities. With the aging population, governments all over the world are going to be increasingly dependent on insurers to provide long-term care and retirement solutions. But making it too difficult for insurers, in terms of raising the capital to write such business or innovating new products, could mean that insurers are not able or willing to provide that safety net for society.

The financial barrier to new entrants in many markets is also very high. We're going to be particularly interested, in the U.K., to see how the FCA factors its new competition role into its regulatory approach in the future, since the FCA has said quite clearly that they do want to support innovation and new entrants into the market for the benefit of consumers.

The third area where balance is required is ensuring effective senior management responsibility without limiting the pool of senior executives and non-executives who want to work in the industry. The PRA and FCA proposals on senior management liability in the banking sector are seen as particularly harsh, and thank goodness they're not being fully applied to insurance. But don't breathe too heavy a sigh of relief, because the provisions that the PRA *are* proposing are still very stringent. For example, the introduction of governance maps require firms to identify very clearly which individual within the organization is responsible for a particular area in the business. The PRA say that they still accept the principle of collective decision-making of the board. However these new provisions place great emphasis on personal senior management responsibility for particular areas which might otherwise be considered as the responsibility of the board as a whole and build even further on PRA's current attestation regime. I think it will allow the regulator to point the finger very clearly at an individual member of management if a weakness or issue arises. Although the insurance sector may not have the full-blown criminalization being introduced for banks, senior management will still be watching over their shoulders to see what the regulator is going to do to them personally where things go wrong.

Fourthly, it's important to balance effective group risk management with entity-by-entity governance, and effective group supervision with local entity supervision. We've seen tensions between these objectives in

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Solvency II legislation and in the actions of individual regulators. We're hopeful that the regulator colleges — which are being established both in the EU and across the world — as they become more established and more familiar with each other, will assist in attaining an appropriate balance and consistency between entity and group regulation. At the moment, for big global organizations, this is a real problem.

Finally, there is the problem of ensuring effective and focused regulation without the cost and management burden becoming overwhelming. As Hermann has said, the pace of regulatory change is faster than ever; the quantity of communication and the complexity of the regulatory and compliance landscape is presenting huge challenges to insurers, both in increased compliance costs and management time. For example, the increased use of Section 166 investigations as a supervision tool in the U.K., and the requirements regarding internal models, the ORSA [Own Risk and Solvency Assessment], and Pillar 3 reporting and under Solvency II, all require significant time and resources.

The complexity and uncertainty of regulation may also impede insurers successfully carrying out M&A transactions, moving into new business lines, and restructuring. Certainly, the uncertainties around Solvency II were one of the reasons for reduced M&A activity in Europe in the last few years, as it became practically impossible to value insurance businesses.

That leads me into the second topic, which I will cover very briefly if I have time, and that is M&A trends in the insurance sector: 2014 will show an increase in volume of insurance transactions, particularly in the U.S. and Latin America, and some increase in value. There have been a few large consolidation transactions in the last year; for example, Manulife's acquisition of Standard Life's Canadian business, and Dai Ichi Life's acquisition of Protective Life in the U.S. Of course, there is also the current proposed merger of Aviva and Friends Life.

There is an increased number and variety of potential buyers of insurance businesses — both strategic and financial investors. The latter include private equity and hedge funds, who are particularly interested in the new wave of the Bermudan alternative capital vehicles.

This year we have seen Blackstone, for example, acquiring Lombard from Friends Life, and the establishment of Watford Re. The regulator's attitude towards non-trade buyers can be mixed and in some jurisdictions, like the U.K., the regulator is relatively comfortable; in others, like the U.S. and China, more circumspect. Generally, regulators look particularly closely at governance and independence in the case of financial owners.

Access to distribution is a key objective in M&A at the moment, including access to technology, as well as more traditional distribution methods. It's been the case for a while in the life sector with the development of platform solutions, but we're now seeing more focus on technology in the P&C sector, as well. Structured reinsurance transactions are also being used increasingly as an alternative to traditional M&A to enable investors to access cash flows from insurance businesses.

In terms of process, in the U.K., we're seeing not only an increased focus in due diligence on regulatory and compliance matters and conduct risk, but we're also seeing increased regulatory scrutiny of the terms of transactions. The regulators have always had to give their consent to change of control, but we're now seeing increased questioning over the acquirer's strategy for the business and its governance proposals as well as financing; we are even seeing regulators requesting copies of the buyer's due diligence report, which raises some interesting questions.

In emerging markets, interest in M&A continues to be high. People have seen opportunities for massive growth in those markets, and are literally piling into places like Asia and Africa. The result is a trend towards more auction transactions, which give buyers less time and opportunity to review what they want to buy, and of course increased prices. The transactions are typically smaller in value, but the potential for the high revenue growth is driving up the prices. Buyers need to be aware not only of the challenges involved in successfully executing the transaction, but also in successfully operating the business post-acquisition to achieve the expected revenue growth. This is especially true where, due to restrictions on foreign ownership, the buyer may not have full control of its investment.

In emerging markets transactions, significant financial crime and compliance due diligence is recommended, including anti-money laundering, anti-bribery and sanctions. But standards and local practices may well differ from those applied in the developed markets. This can cause difficulties not only because of extraterritorial legislation, such as the U.K. Bribery Act, but it also raises questions for buyers about reputational risk and what their risk appetite is. The value or success of the business being acquired may also suffer if the buyer tries to adopt global standards rather than local standards in operating the business.

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Conducting effective due diligence in emerging market transactions is incredibly important, but can be challenging. You're unlikely to obtain the degree of contractual protection in transactions that you would expect in the U.K., Europe or America. Even if you can get a contract that looks something like you would expect, the chance of enforcing that — under local law, in particular — may be slim. So my recommendation would be to really put the emphasis on effective due diligence, as opposed to relying on the wording of the contract.

Part of this due diligence involves looking at the local legal and regulatory environment to understand the responsibilities and exposures of shareholders and directors of an insurance company, and also any restrictions which might affect managing the business once acquired, particularly where there are foreign ownership restrictions.

There may also be difficulties in increasing your shareholding later or exiting your investment, or even getting out your dividends. In many emerging markets, the legal and regulatory environment is also changing rapidly, so it's important to identify any proposed changes and to continue to monitor for changes once you've acquired your investment. There are some significant new ownership restrictions currently being proposed in Indonesia, for example, and there's a proposed insurance bill in Kenya which could result in significant changes there. Changes in foreign ownership limits for insurers in India are imminent. Even though the limit may be increased from 26% to 49% ownership there is a concern that in practice other restrictions may affect the degree of practical control which can be achieved.

Overall I would agree with Hermann that all of these global and local regulatory business, and market developments, have, indeed, significantly increased the scope of the role of General Counsel and his team, and the demands placed upon them. Not only have they increased the scope of the work of the legal department, but they have made it essential to ensure cooperation and coordination between the Legal Compliance and Risk teams.

JACK FRIEDMAN: Thank you very much. Our next speaker is Mark Bergman, who is a partner at Paul, Weiss, Rifkind, Wharton & Garrison.

MARK BERGMAN: Thank you. As I was thinking about this program today, I was reminded of a speech that Mark Carney gave only a few weeks ago. After having gone through the lay of the land as Governor of the Bank of England, he took a number of questions about fiscal and monetary policy, and then at the very end, somebody got up and asked, "Governor, why haven't more bankers gone to jail?" The Governor took a deep breath and turned to the audience — many of whom were bankers, lawyers, and hedge funds managers, and said, "Now, that's a very interesting question. Probably 95% of you in this room should be thinking long and hard about that question and the answer to that," and then he went on to discuss some of the difficulties. The good news is, I'm not going to focus on bankers; I'm actually going to focus back on lawyers. We used to be the bad guys in the room, and then we had the bankers, and now we're back to lawyers. In the context of themes that both Hermann has touched on, and Katherine indirectly, and that is gatekeepers, we're going to try to do that all very quickly.

First, Hermann, congratulations. This is very, very well-deserved. From my part, two things: one, we, as a firm, have seventeen years of experience in standing behind and standing with Swiss Re, and we're very proud of that association. But I'm also very interested and proud to be part of this because I always look forward to the sessions that you and I have when we meet in Zürich. Particularly so because you have a rare quality, and that quality is that the first question you ask after, "How are you?" is, "What do I need to know? What do I need to know about my legal team; what do I need to know about my company; what do I need to know about my industry?" As I think about those very questions, they all coalesce around this question or issue of gatekeepers and, in particular, the role both of outside counsel and, more importantly, inside counsel, from the Chief Legal Officer down through the team.

Why is this question so important today? It's important — again, you will have heard these themes throughout the morning — one is the changing role of in-house

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counsel, having moved from a strictly legal position to wearing at least two hats — as a business advisor, as well as a legal advisor.

Secondly, the changes that industry today faces — not only the reinsurance industry narrowly defined, but more broadly, the financial services industry. The change in the regulatory environment — and again, not only those changes that impact the regulated entity, but more broadly, whether it's antitrust, whether it's anti-money laundering, ITC, bribery, and so on.

Financial institutions — wherever they may be — a related point, and we'll come very quickly to examples of this, face increased risk of regulatory intervention, particularly by the United States and the long arm of U.S. jurisdiction that is reaching conduct in a variety of places well beyond the borders of the United States.

Separately, the reality that notwithstanding the G20, the FSB and a variety of others that are committed to a one-size-fits-all, single approach to regulation, enforcement, and regulatory intervention — that is clearly not the case. It is not the case in Switzerland; it is not the case here in the U.K.; certainly not the case in the United States. We do not have a level playing field, and therefore, one needs to understand what the implications are in *any number* of jurisdictions and not simply fall back on "Well, here's the answer here; we sit in the comfort of wherever our counsel may be located, and we don't need to worry about the rest of it."

Separately, the implications of ignoring red flags — that is, again, so much of a common theme around gatekeeper liability.

Finally, there is the impact of culture. It is particularly important, sitting in this room in London with representatives of a number of nationalities, backgrounds, cultures and so on. When you bring all of that together within an institution, not only in terms of the legal department, but management, the culture of compliance, the culture

> "Recent criminal indictments in the U.S. suggest that a gatekeeper might be held accountable for failing to stop misconduct, even where he or she had no role in the wrongdoing." – *Hermann Geiger*

of approaching things; then you layer in the culture of the regulators and the prosecutors sitting at the New York DFS or at the DOJ having a very different view from the FCA here, or the FINMA in Switzerland. We come back to all of this, and to me, it coalesces, really, about this increased focus on gatekeepers and the roles that people have, particularly in-house, and the views that the courts and the regulators are bringing to bear with respect to in-house counsel in particular.

Far more important now, given the more robust both regulatory environment and the enforcement that comes behind that, tied to — as I mentioned at the outset — the changing role of counsel. The complexities and the challenges that counsel will face in not only navigating through the variety of different potentially competing or conflicting regulatory requirements, and at the same time, facing far more complex aspects of their business, just as a business matter — and again, Hermann, you had cited your five megatrends. Business is challenging, and the reinsurance sector faces a number of different issues, whether it's competitive aspects, the alternative capital that you mentioned, or others. All of that comes together with a changed environment at the same time, including social media and cyber security.

If you think about life today, and you think about life when you first started out at GE, it is far more complex with far more complex challenges, and at the same time, you are being expected, as the CLO, and legal departments generally are being expected to do far more than just, "Tell us where the lines are and keep us from crossing all of those."

So, the timeliness of this topic: we have the BNP case arising from conduct dictated by the management in France; we have the General Motors case in the United States, but this issue of gatekeeper responsibility is by no means new. I did a survey in preparation for a prior program that I did with Hermann, and counted over 66 cases in the United States brought principally by the Securities and Exchange Commission against in-house lawyers for issues arising out of inadequate disclosure, obstruction of investigations, inadequate responses, failure to follow internal controls and procedures, and liability in certain situations where the defense was, "We simply did not know."

So as far as gatekeeper, the messages certainly out of the United States are very clear, not only in terms of the cases that I cited. The regulators are very specific about all of this, and certainly, from the U.S. perspective, we have the benefit of very active public speaking engagements by the Chairman of the SEC and so on, where they lay out not only their enforcement priorities, but what they think this all means for the regulated community. Time and time again, whether it's references to the failure of the neighborhood watch being asleep at their jobs, the absence of lawyers, or the failure of lawyers to do what they are supposed to do or are expected to do — those themes are recurring. Chairman White, three or four times in the last year, has made this point very clear; as have other SEC Commissioners.

The regulators are not alone. The courts, likewise, have been quite active in questioning where the legal community was in the face of a series of scandals. If I can quote from Stanley Sporkin — and this is back in the savings and loan crisis in the late '80s:

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"Where were these professionals, a number of whom are now asserting their rights under the Fifth Amendment, when these clearly improper transactions were being consummated? Why didn't any of them speak up or disassociate themselves from the transactions? Where also were the outside accountants and attorneys when these transactions were effectuated? What is difficult to understand is that with all the professional talent involved (both accounting and legal), why at least one professional would not have blown the whistle to stop the overreaching that took place in this case."

Clear focus is on those in-house, and you now look from the perspective of those in-house, and one of the first questions that lawyers will ask is, "Who is my client, and who do I owe my obligations to?"

The challenge here is that the regulators have upended the traditional view of the client, the client being the company. Instead, the client is either the shareholders or the broader stakeholder market, and regulators have been very clear, certainly in the United States, of expressing a view that is inconsistent with the traditional notions of who a lawyer represents. The SEC, by the way, went a few steps further and tried to legislate a reporting-up obligation through enforcement actions that they brought against lawyers. That ultimately wasn't successful; Congress then took up the cause, as part of Sarbanes-Oxley, and imposed a so-called §307 reporting-up obligations that would ultimately involve reporting up through the ranks to the board of directors, if, for example, the General Counsel was viewed as being part of the problem and not part of the solution.

From a U.S. perspective — even though we sit here — we worry about these issues because not only has the focus of the regulators changed, and the expectation, but the nature of the conduct that is now potentially at issue has changed significantly. For those of you who haven't focused at this level of detail in the United States, the SEC is on record as saying that having focused now on the large insider trading cases and the large subprime cases, they are now going back to the traditional mission of focusing on very narrow areas of conduct that may suggest that there are broader issues. This is known as the "broken windows" theory; it's borrowed from the former mayor of New York, Rudy Giuliani, who figured out that if they go after the fare-beaters and others, they're going to take a number of guns off the street and a number of criminals off the street, and of those who have spent time in New York, you probably think that there was something to all of that.

But it is being applied in a regulatory context, and we've seen, in the United States, a variety of violations of prophylactic rules, with fines of $25,000, $40,000, $50,000, all the way up to far larger numbers.

For the regulator, from the U.S. perspective, different conduct is now at issue. Accountants are also targets of all of this; this is part of their operation "broken gate," so we've got a few different broken things that the SEC feels that they need to be dealing with. At the same time, they have far more money to do this. Certainly, in insider trading and related cases, they have access to tools that formerly were available only to the pursuit of organized crime — wiretapping and so on. They've now moved into a different data mining approach, and that's how they've tracked down a number of insider trading cases. They're now using that in disclosure, and they're putting everybody's annual reports and related disclosure through computer algorithms, and picking out language that they think suggests that there is fraud behind all of this.

Our environment has certainly changed, and at the same time, the role of counsel has changed, in-house counsel has changed — as I mentioned, wearing two hats, and the expectation that there is a far greater emphasis now on tone at the top, compliance programs, and if you haven't fully done what you're supposed to do, you are running the risk of being a target. For those who think it's purely hypothetical, again, I go back to these 66 cases.

They fall, by the way, into a few narrow categories: stock option backdating — a few people went to jail; a number of people were fined; various people were disbarred. There have been issues around corporate investigations and failure to do what the regulator expected would be done.

That list goes on, and from a cross-border perspective — if we dwell just for a few seconds on BNP before I finish up — BNP was criminally charged; the largest fine paid to

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date. The legal department was front and center in this entire operation. Now, they weren't only the bad guys; there were a few good guys in all of this, and the record was very clear that they were sidelined. They were told to shut files. We also had the involvement of outside counsel that had originally given an opinion that this conduct was okay, only to change their minds a few years later. When they changed their minds, that was ignored.

With that, let me give five points that people should take away from all of this. In-house counsel needs, obviously, to be very conscious of the risk, and Hermann, starting with the questions that you ask, that is the template. What is it that I, as General Counsel, need to know? If the General Counsel of General Motors had been made aware of the fact that there were a series of settlements that were just below the $5 million mark that would have required reporting up, they would have realized that they were facing potentially significant penalties from the regulatory standpoint, as well as plaintiff lawsuits, because of defective airbags. GM is obviously a huge organization, but nonetheless, it does bring it all back to the importance of the processes and procedures that people have in place to bring these things to the attention of those who can then connect the dots.

Secondly, the use of outside counsel, and the importance of asking outside counsel the right questions, because if you look at some of the cases, outside counsel was asked for an opinion, but they weren't given all the facts. If they aren't given all the facts, it doesn't matter that you've got an opinion of counsel that something is okay.

The importance of having policies and that people follow those policies — again, a number of examples where people were cited for failure to pursue their own policies.

Fourth is access to the board. It is so important for those with either the CLO or the GC title to have access to the board and to board committees, and to be able to bring things to the attention of the board.

Finally, there is understanding the importance, when things go wrong, of an investigation, and doing it properly. Again, we've seen lawyers being cited, and fines and other penalties being assessed, particularly in the FCPA (the Foreign Corrupt Practices Act) area, because investigations were used as a basis for moving on, as opposed to addressing the conduct.

The world has changed; it has gotten far more complicated than it used to be, and it just highlights the importance of people asking the right questions. What is it that I really need to know?

Thank you.

JACK FRIEDMAN: After a recent program in Paris, a gentleman came up and introduced himself as a judge on the French Supreme Court. He invited us to do a program on the global reach of American regulation and enforcement. This a very timely topic.

Our next speaker is Gregory Astrachan of Willkie Farr & Gallagher.

GREGORY ASTRACHAN: Thanks, Jack. I'm going to pick on some specific issues in a granular look at what Hermann and Katherine were talking about. First, let me say to Hermann, I want to congratulate you on a well-deserved honor.

As I thought about the role of a General Counsel of a global company today, it occurred to me that compliance and compliance-related questions take up an increasing amount of your time and attention. These are, to put it in Hermann's terms, the worrying trends, and they're real, and they're real today.

It's clearly true for financial services businesses. The nature and scope of regulation has reached truly breathtaking proportions, and longstanding practices are subject to reexamination on a moment's notice. Staying ahead of those kinds of developments is incredibly challenging.

Let me give you a case in point from the lens of an M&A lawyer. In April of this year, we had a somewhat counter-intuitive cartel ruling out of the European Commission. The ruling has caused alarm bells to ring in the halls of private equity firms, but it has application well beyond private equity. In the April ruling, the EU Commission fined Goldman Sachs €37 million, finding them jointly and severally liable for cartel infringement on behalf of Prysmian, an Italian power cable maker that they owned through their private equity arm.

Goldman bought Prysmian from Pirelli in 2005, and they reduced their stake over time pretty quickly, selling down to 43% in connection with a 2007 IPO, and ultimately selling the entirety of the position by 2010. In fact, in its appeal, Goldman argued that it only owned 100% of the company for six weeks. Here's the surprising part, at least for a corporate lawyer, if not for a competition lawyer: There was no allegation that Goldman actually participated in or was even aware of the violations by the cartel, and yet they landed a €37 million fine, years after they had sold their entire stake.

The Commission imposed the fine on Goldman purely on the basis of its parental liability doctrine, because Goldman, through its private equity arm, owned a stake in Prysmian at the time of the alleged

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violations. Now, under the Commission's parental liability doctrine, a parent can be liable for the actions of its subsidiary where it exercises decisive control over the sub's business. There's a rebuttable presumption if you own 100% or close to 100%, that you are exercising decisive control.

The fact that Goldman no longer owned even a single share of Prysmian at the time of the enforcement action didn't stop the EU from fining them. Ultimately, the Commission based its decision on the fact that Goldman had exercised decisive influence during that period when the violations occurred. They noted that Goldman had representatives on the board; had the power to remove and replace directors; had approximately 100% of the voting rights during two of the ten years that the violations were occurring; and they received regular monthly reports. Not so much for a financial investor, actually.

Now, while it's certainly the case that the Commission has frequently succeeded in imputing, in the case of cartel infringement, illegal conduct of a sub to its parent, the imposition of fines on a financial investor, particularly one that had completely disposed of its interest years before, has attracted a lot of attention. It certainly captured my imagination.

Let me tell you what it says to me, as an M&A lawyer, why it has ramifications beyond private equity and beyond the cartel context. The first thing is, holy cow! It's a great reminder that businesses can be exposed to liability related to an investment *years* after it has exited an investment. That's a major problem. It's *really* hard to obtain contractual protection for that. You think about survival periods of reps and warranties; they just don't last that long.

It raises the question for me as to whether we should relook at that; whether we should think about compliance like we do environmental matters. In an industrial deal, you frequently will get extended warranties

on environmental matters. I don't know whether that is going to work in the context of acquiring businesses — whether a seller will accept that framework — but it's something to think about.

In addition, it's a great reminder that the fact that a parent is unaware of illegal activity at its subsidiary is not a defense. That's clearly true in the context of cartel law, but it's equally important in the other areas we were talking about — sanctions, anti-bribery, money laundering — where there can be successor liability.

So, attention to compliance in M&A is hugely important.

What do you do to avoid risks? Due diligence, due diligence, due diligence. Simply stated, it's essential that you thoroughly evaluate compliance risks when considering any potential investment. Understanding the picture *before* you're committed gives you options.

That doesn't mean that diligence is easy or foolproof, and target companies don't readily admit illegal conduct. But if you find something before the fact, you can do something about it.

So that's step 1; it's kind of obvious, but critical.

Step two, prevention is key. Unfortunately, the details of the decision in the *Goldman* case aren't available, but I do wonder whether the Commission was, in effect, saying that Goldman could have done more on the compliance front post-deal. That's not assured, but it's certainly something to think about.

Robust and effective compliance programs should be implemented along the lines of what we discussed previously — *immediately* when you take control of a company. Assess the substance and implementation of the acquired company's compliance program, if you haven't already done that during pre-transaction diligence. Schedule compliance reviews of all new business units in order to assess whether it's necessary to implement new procedures. Address any deficiencies in the target company's compliance programs by either enhancing the target company's existing policies or procedures, or integrating them into your own, which tends to be the pattern that Swiss Re follows, and which they're well-advised to do. But as Katherine noted, that presents some complexity, particularly for businesses where local practice and law permit a practice that your policy does not. That is a really challenging question, because the one way to get killed is to have a policy and not abide by it; that's kind of *de facto* "you're dead" in the eye of a regulator.

How do you manage that? It's a *really* complicated question, and not one I can answer today. It's highly based on the facts on the ground; the particular circumstances that you're trying to address; and the nature of the particular problem. You need to implement those policies; you need to conduct training; you need to impose consistent discipline on wrongdoers; and you need to audit and monitor your compliance processes.

That's a big step, too.

Three, and I addressed it briefly before: reps, warranties, indemnities are worth looking at. Certainly in the short term,

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if you do all the things that I was saying – diligence, roll out compliance programs – hopefully during the survival period of an acquisition – you'll learn what you need to learn during the period when you still have recourse against the seller of a business.

Then four – and this is an interesting one which, again, Katherine partially alluded to – is to consider the structure of the acquisition. Is it practically possible to structure in a way that is more compliance-friendly? For example, if your client, the businessperson, tells you, "I want to buy a ten or fifteen percent stake in a company," but they're agnostic between ten and fifteen percent – does it make sense to stick to sub-ten percent, because there are regulatory hurdles that apply from the point you own ten percent or more of a company? Does it make sense to have a board seat? Do you have to have negative controls over the business, or are you fine making a pure economic investment? Those are the things that are worth throwing into the hopper – along with, of course, and sublimated to, commercial considerations. But it is worth thinking about – investments, and how compliance, how that catalogue of things interact in terms of both the commercial considerations and the compliance risks.

Ultimately, commercial considerations drive these decisions. However, connecting the dots between your compliance obligations, M&A structure, the roll-out of post-acquisition compliance programs – that is a valuable exercise, an exercise that's critical in the context of M&A. Thank you.

JACK FRIEDMAN: Our next speaker is Stephen Tester of CMS Cameron McKenna.

STEPHEN TESTER: I am a partner in the Insurance and Reinsurance Group of CMS Cameron McKenna. I am responsible for the CMS Cyber Network, which provides legal support in relation to cyber breaches over 40 jurisdictions across Europe and elsewhere.

My talk today is about systemic cyber risk as it affects companies, and I have been asked to speak for a short time only.

For present purposes, I use the term "cyber" in its limited sense, referring to unauthorized access to data or systems with the intention of causing damage to those systems or of accessing and/or corrupting data held on them, and with the objective of personal gain or malicious gratification. Essentially, it is the hostile action of an attacker intent on damaging a company, its customers or suppliers.

My theme is that the key to containing the risk of cyber attack is essentially in good corporate governance and leadership.

It is, however, important to recognize first that the roots of the problem lie within the immense speed and scale of the technological advances of the last decade.

Because no effective way has yet been found of regulating cyberspace, we live less in a global village than a global jungle. Reward comes to the quickest and fittest, not the most considered and dependable, and above all there is no place to rest. It is a world where the business device of choice can go from development to virtual redundancy within 5-10 years, so there is an imperative for speed, sometimes over assured serviceability. The opportunities for bright young software developers, working with limited capital and few or no overheads are extensive and transnational, creating an environment where OSPs draw heavily on a splintered supplier base contracting with low liability caps.

This state of affairs has a number of consequences:

1. There is a huge temptation for companies to launch new technological solutions before adequate testing in an operational environment. This can compromise system security. New anti-virus software can, for example, be installed that interferes with business efficiency, only to be turned off, leaving users and their customers exposed.

2. Users of new technology quickly become accustomed to its benefits and become dependent upon it, making businesses even more vulnerable, in a competitive environment, to denial of service attacks and extortion threats.

3. Conventional contractual arrangements which look to contain risk by holding culpable suppliers and service providers liable at law can be of limited use. Outsourced IT contracts frequently contain stringent caps and exclusions of liability and enforcement can be problematical, particularly if any claims are to be submitted to the courts of a jurisdiction where speedy access to justice is an issue.

4. Because cyber crime is truly international it can be very difficult for law enforcement agencies to detect and track down culprits, even where (as in the U.K.) relevant governments recognize that there is a problem and devote considerable resources to dealing with it. Imposing extensive reporting requirements on companies is theoretically beneficial, in that it enables specialist cyber

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crime units to track trends, make connections and develop effective strategies and tactics to pursue offenders — but where the flow of data is too great for available officers to process it, there is a risk of overwhelming investigators, rather than assisting them. Finally, there are major issues of communication and co-operation between international powers. All of this, coupled with the immense capacity for concealment of illicit practices within the Dark Web, makes the pursuit of criminals very difficult and the prospect of deterrence low.

5. Faced with these problems, but under pressure to take some action, governments tend to turn to slower-moving targets, resulting in increased regulation of established, consumer-facing companies. Because legislation tends to be made nationally, however, and because even uniform laws can be subject to subtle differences in interpretation, companies seeking to achieve full compliance in multiple jurisdictions are faced with a complex and inevitably expensive task.

One ray of light here has been a new willingness on the part of the U.S. administration to see companies such as Sony, Target, and Home Depot as victims, rather than simply as inadequate custodians — but the approach of penalizing businesses who are not deemed to have demonstrated appropriate awareness and care remains prevalent.

Insurance is a possible partial solution for some companies. Cover is now available for the emergency costs of dealing with a cyber-attack, with access to 24/7 hotlines and cross professional crash teams. It is also possible to insure against claims from data subjects, customers and other third parties, the costs of defending regulatory investigations and proceedings, and the loss of business during a period when service is compromised.

In general terms, however, it is difficult to get any, or any extensive, coverage for the long-term effects of a breach on the reputation of a business after the period of service interruption or disruption has ceased. Furthermore the take-up of coverage in many jurisdictions has been poor. (This may change as mandatory reporting requirements bite and companies face large fines if breaches are concealed.)

There is the possibility that big users of IT services will start to ask tenderers for evidence of cyber coverage, as well as auditing suppliers' data security arrangements. In some sectors — for example, power, energy, telecommunications, and critical infrastructure — the potential cost of a major breach can be valued in billions of pounds, to the extent that some commentators have argued the case in U.K. for a government backed arrangement similar to Pool Re. (This provides reinsurance protection against property damage resulting from terrorist acts.)

So, established companies face a huge challenge to ensure, and demonstrate they are ensuring, data security. If they fail to do so, they face regulatory censure and extensive reputational damage — and the problem cannot be contained by insurance or contractual terms. It is for this reason that most of the major financial institutions and, indeed, market regulators such as the SEC, have publicly identified cyber as being at the top of their risk-management agenda.

So what does effective management of cyber risk look like?

I would say that the very first step should be the development of auditable data security strategies and policies and the communication of these to all members of staff. Clear protocols should be set up on matters such as the use of personal devices for business purposes and while on business premises. Encryption, password protection and other methods of ensuring data security should be piloted to ensure that they are compatible with the smooth running of the business and compliance should then be assured by an effective system of monitoring. Where employment terms or trade union involvement make enforcement of such protocols

difficult, their importance will need to be explained to staff bodies. Finally, serious thought needs to be given to how data security can be preserved where OSPs have access to the company's systems and networks; whether that be by pre-tender audits, contract terms, subjecting of suppliers to periodic security audits, or a combination of the three.

Critically, all of the above has to be funded — effective data security is an expensive business — and needs to be recognized as a priority at the highest levels of the company, from the Finance Director downwards.

The next point that I would make is that this is not a problem to be passed solely to the IT Director. There is no technological solution that will deal with all potential attacks. It is necessary to assume that these *will* be received and that some of them *will* be successful. It needs to be made clear to the IT function of the company that senior management will be understanding and supportive in the event of a successful, or potentially successful, attack. In my experience of handling breaches, it is very unhelpful if the culture of the company causes the IT department to go into denial, thus preventing the crisis management

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team from making an early and accurate assessment of the source and extent of the breach, and the measures required to fix it.

It is also absolutely vital that the company has a viable crisis management plan, which enables very senior management to be involved from the outset of any significant attack. The most successfully handled breaches are those where the crisis management team includes or has immediate access to directors with real authority to make pressing business decisions at short notice at anti-social hours without the need to seek internal approval.

Once set up, it is important that any crisis management plan is tested with realistically modeled scenarios and that a clear view is taken of whether the company has the necessary specialist legal and IT forensic support to be able to respond at short notice to an emergency. If that resource is not available, one way of accessing it is to look into an insurance solution under which the Insurer actually offers to deploy (and meet the costs of) its own designated crash team in the event of a breach. (Some Insurers offer free consultancy support over the telephone, which may be sufficient in some situations but not others.) At the moment the premia for such covers tend to be affordable and there is a plausible view that this will continue to be the case for early entrants into the market, particularly those who can show that thought has been given to dovetailing insurance protection in with an effective risk management system. Again, however, we are looking at a cost.

Which brings me back to my theme on which I will close. At the end of the day, effective cyber security is a matter of corporate governance and leadership. This is increasingly the expectation of the legislators and the regulators, the consumers and the stockholders. Those who ignore this message do so at their peril, even on occasions to the extent of personal liability. Directors and Corporate Counsel should beware.

JACK FRIEDMAN: Thank you very much.

> "It's just so much easier to get into the spotlight in today's environment, and addressing all the competing expectations requires management today to be more right than right and purer than pure." – *Hermann Geiger*

STEPHEN TESTER: Thank you.

JACK FRIEDMAN: I would like to have the panel discuss governance, including challenges at the highest level of the company, particularly the board and C-suite.

There was a General Counsel of one of the largest companies in the world, who mentioned that his corporation had a capital investment budget of more than $20 billion a year. However, the board, as a whole had only a few minutes *a year* to go over this capital budget. There was a board committee that reviews it. Since massive amounts of issues are worthy of board time, how does the board determine its priorities?

HERMANN GEIGER: The selection of priorities and hence, the way the board interacts with the rest of the organization depends first and foremost on the state of the company and the environment. Generally, the time invested by the board in dealing with all relevant board matters today looks much, much different than it looked, say, pre-financial market crisis. As far as Swiss Re is concerned, the board's quality, transparency, and accountability as a main operating principle alongside with a comprehensive set of KPIs, as well as robust frameworks for business reviews and corporate governance, including regular self-assessments, make sure the right priorities will be chosen and sufficient time will be allocated.

Of course, there is dependency on management to also bring up the right topics. At Swiss Re, like in many other companies, the board committee work is significant, and they do deep dives on multiple business matters throughout the year.

Personally, I fully support the view that it is management's and also my own obligation to raise any issue to the board and to demand a discussion where warranted.

By way of example, to pick on the last theme of cyber security which Stephen mentioned, we made a recommendation to the board just recently. Legal & Compliance does an annual corporate governance report to the board, where we depict the related developments in the U.S., the U.K. and the European Union. The purpose of this report is to outline trends and developments in corporate governance, to point to potential issues for Swiss Re, and to recommend areas the board should be looking into more intensely. As a matter of fact, we recommended cyber risk as a topic for the board to look into more deeply. From now onwards, cyber risk is a regular item on the agenda of our Finance & Risk Committee.

GREGORY ASTRACHAN: Well, I can shoot on that point, and in terms of how we analyze that. There are matters that are routine for the board to consider every year. For an insurer, it is capital, it is risk management. Then there are the issues *du jour*. I'm sure the others on the panel do the same thing – but we routinely look at that over the course of the year, develop our list and help our issuer clients develop what they should be putting in front of the board that particular year.

Cyber risk is a great one, because the SEC had a roundtable – I think it was in May or June – and they expressly said, "This is a board issue." When the SEC says something is a board issue, it's a board issue and it's a board issue that year. There are things

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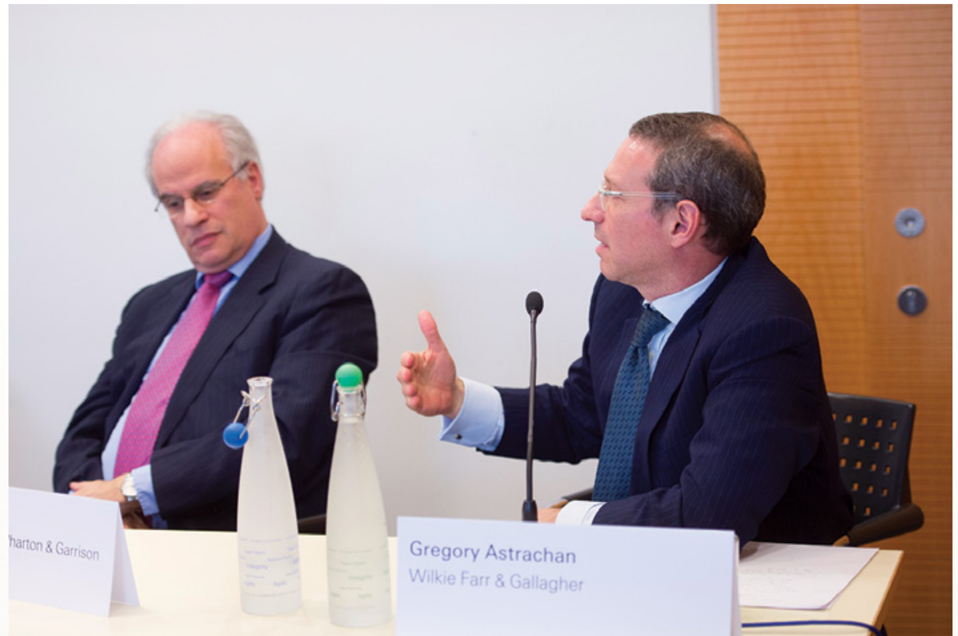
that are as obvious as that every year, but clearly there are other developments every year that are more subtle.

MARK BERGMAN: There are two points on that, going back to one of the items that I had mentioned in terms of access to the board and the role of the Chief Legal Officer in creating the emerging risk list. The emerging legal, regulatory, and other set of potential risks to the company, and trying to be smart around that so that the chairman, as he or she sets the agenda, can focus on what's important.

The other point I'd make is I had breakfast yesterday with a director; she's on the board of four companies, two financial services companies. The point that she makes is that it is really critical for new directors coming in to understand the nature and how the job has changed over time, and the time commitment. Because the time commitment, particularly for heads of audit committee, of financial risk committee — however denoted — is far more significant than it was historically, and is often far more significant than what people expect. Over time, what you're going to find is the agendas aren't going to get any shorter; they're only becoming broader. It's about thinking strategically as to where something should be. Is it in the committee? Does your committee structure need to be changed in order to deal with all of this? Directors do need to understand — particularly in the financial services area, and more broadly — that they need to be spending far more time doing what they do, and as a result, they should be thinking very smartly about whether this is something that they do want to do.

JACK FRIEDMAN: There was a California company where one of the directors asked the board whether he could have his personal attorney sit in on every board meeting at his expense. He was worried about his personal liability.

GREGORY ASTRACHAN: They can get another director!



JACK FRIEDMAN: Does that mean that every director has a right to bring his attorney? With the fear of personal liability for board members growing, how does one maintain the spirit of cooperation? There is the possibility that Directors might end up being witnesses against someone sitting in the room, including the CEO.

HERMANN GEIGER: I would start by asking the person, why he's making this proposal in the first place. What you would probably get to understand when you ask this question is that there is not enough trust in how the analysis is made and in how the issues are presented to the board. It goes back to the point I mentioned before — is there enough trust in what management does? If there is enough trust, I would expect that this issue would go away immediately.

JACK FRIEDMAN: There are currently about 50,000 people who are members of boards on NASDAQ and New York Stock Exchange-listed companies in the U.S.

A prudent businessperson says, "No matter how much I trust everybody else, how do I conduct myself in the boardroom to protect myself in case the government comes knocking, and I have to be a witness."

HERMANN GEIGER: I might have given you just half of the correct answer. The other half is that a lot of effort typically goes into the preparation of the board meeting. In a case like this, we would sit together with this board member in a smaller setting, where we explain the transaction, where we go through all the pros and cons of it including the related risks. I would try to isolate this conversation from the rest of the board's meeting. But ultimately, I just cannot see that board members sit in the board room with their lawyers. The board room is there to discuss business and strategy, primarily!

JACK FRIEDMAN: Has anybody else run into the question of trust and confidence with respect to Directors?

KATHERINE COATES: Particularly as a non-executive director, you would do due diligence on a company before you accept the position. You really do have to understand the corporate culture, the management approach and the information available to the board before you take on the job. But having done that, you should be in a position where you are broadly confident with the way that the company operates.

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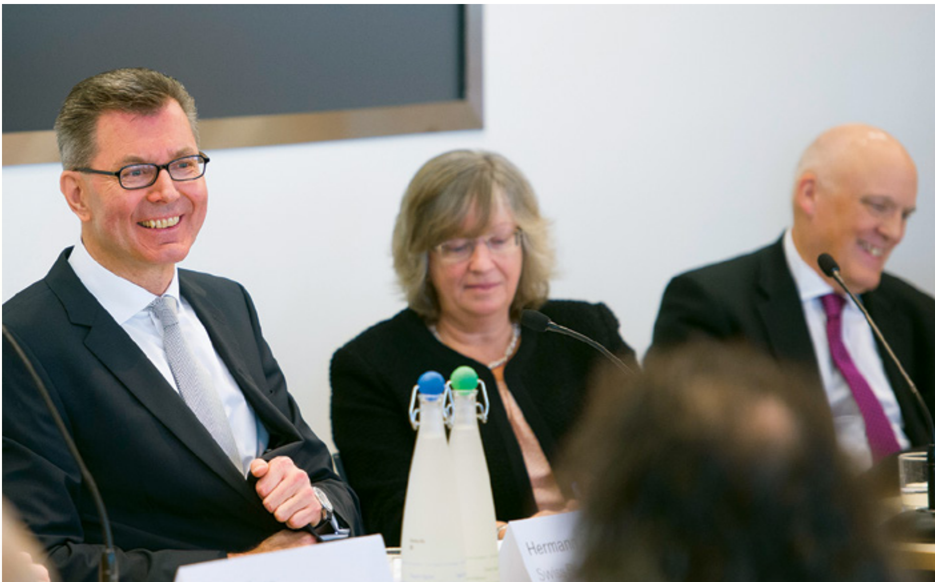

The second thing is making sure that you have sufficient education about the business and its environment, and not just when you join the board, but as an ongoing matter, that you are sufficiently knowledgeable to support or constructively challenge what the executive proposes. Often in the past, that has been neglected by executive management, and then they were surprised when they got to a board meeting and maybe the non-execs were not on board.

That's changing. We're now seeing a lot more senior executives asking how they can get the board comfortable about things, particularly in the insurance sector. The most recent example under Solvency II is the ORSA (Own Risk and Solvency Assessment), where the board effectively has to sign off on the ORSA, but there is very little guidance in the legislation about what responsibility comes with that, and what the board is actually signing off on. There is no way, practically, that the non-executives can get into the fine detail of all the modeling that goes to producing the ORSA. It should be possible with appropriate training and briefing to get them sufficiently comfortable with the principles being applied, and the risks that are being taken into account, and the assumptions that are being made, so that they can give the necessary approval, because the regulators require it. It's a very good example of trying to get the balance right on the board between management and oversight, and ensuring that you have the right people and skills on the board to do that.

JACK FRIEDMAN: How often, in the U.K., is a director personally sued?

STEPHEN TESTER: Often enough for there to be a thriving market for D&O insurance here.

JACK FRIEDMAN: We will take a question or two from the audience.

[AUDIENCE MEMBER:] This is in regard to your board discussion. I'm a director of a U.S. corporation and I am very familiar with the Department of Justice.

I'm also very familiar with D&O suing. Board culture is formed when the chairman opens up for discussion and debate, and communicates to the head of risk, or head of operations, or head of compliance, and meets with non-executive directors. Directors have a real job to understand their jobs, and also how they interact.

JACK FRIEDMAN: I'd like to just end with a comment from one of our Honorees, James Comey, who was the General Counsel of Lockheed and later served as a world director of HSBC. He said that your staff watches you to see how you, as the leader, *really* conduct yourself — not just what you say about principles of ethics or compliance. Leadership has to follow their own pronouncements.

I have one final question for our Guest of Honor. In the five or so minutes a month that you have for your own personal life, what do you like to do?

HERMANN GEIGER: I hope it's a little bit more than five minutes! I'm an active person; I do a lot of sports — skiing, sailing and what have you. I'm also a hobby musician, so I play guitar. As I told you yesterday, very early on, when I was relatively young, I was deciding between becoming a rock star or a lawyer, so that's how things played out eventually!

I enjoy life and I try to take things easy. When we are under so much tension every day as a business professional, we need to find enough time to counterbalance the pressure. It's important.

JACK FRIEDMAN: I want to thank our Guest of Honor and our Distinguished Panelists. It's obvious from the discussion today that Swiss Reinsurance has people doing conscientious work in their specialty, and the company dedicates itself to being a good corporate citizen. We honor his colleagues today, as well as Mr. Geiger.

HERMANN GEIGER: Thank you.

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Stephen Tester
Partner

Stephen has been a partner in the Insurance and Reinsurance Group at CMS and its predecessor practices since May 1988, having qualified in 1981.

He is recognized as a leading lawyer in several fields of insurance, his main areas of specialism being construction insurance (all classes) and D&O.

Stephen is the main client relationship partner for AIG Europe Limited and Chubb, who are both significant clients of the firm.

Historically much of Stephen's work has been on contentious matters, on instructions from Insurers and Insured. He does also have a mature policy wording advisory and drafting practice and has assisted in the development and documentation of a number of new product lines, including M&A insurance (e.g., warranty and indemnity, tax indemnity, POSI and litigation portfolio transfers) and ancillary construction insurances (e.g., latent defects, operator-controlled project PI cover, force majeure, and bonding substitute insurance products etc.).

Finally, Stephen's team handles insurance consultancy work for non-insurance clients of the firm — principally advice on the insurance and consultancy clauses in contractual documentation for PFI, PPP, and Energy and Power projects.

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CMS is delighted to support the Directors Roundtable recognizing the career of Hermann Geiger. This page provides some information on us.

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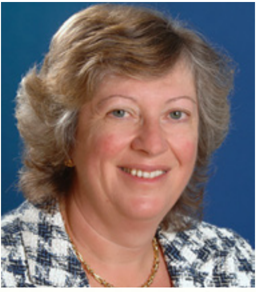

Katherine Coates
Partner

Partner since 1990 and Global Head of Insurance, Katherine has over 30 years' experience of all aspects of corporate and commercial work, including mergers and acquisitions and joint ventures. Since 1988 she has concentrated on providing regulatory, M&A, corporate, and product development advice to life and non-life insurers, asset managers and other financial institutions. She is head of both the firm's Financial Institutions Group in London and its Global Insurance Sector Group. Katherine is rated a "star individual" in *Chambers U.K.* and is listed in *Chambers 100* (in which she is the only insurance sector representative).

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Mark Bergman

Partner

Paul|Weiss

Mark Bergman serves as the head of the Global Capital Markets and Securities Practice Group and is resident in our London office. Mark joined Paul, Weiss in 1982 and was elected to partnership effective January 1, 1991. In the early 1990s, he was the resident U.S. corporate partner in the firm's Paris office.

EXPERIENCE

Mark has extensive experience in corporate finance and securities transactions. Offerings in which he has been involved range from traditional offerings of equity and debt securities (including high yield debt and investment-grade Yankee bonds) to offerings of perpetual and long-dated hybrid securities for financial institutions. As part of the firm's general representation of U.S. and non-U.S. companies listed in the United States, Mark advises a range of listed companies on reporting and other obligations under the securities laws, establishment of corporate compliance programs, and compliance with corporate governance standards under the securities laws and stock exchange rules. He has advised companies in connection with SEC and other U.S. regulatory investigations, and stock exchange proceedings. Mark has authored various no-action letter requests to the SEC, contributes articles regularly to professional journals and trade publications and participates frequently as a panelist at seminars and conferences in the United States and abroad on securities and capital markets-related topics.

Mark is admitted to the Bars of the State of New York and the District of Columbia.

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Gregory Astrachan

Partner

Gregory B. Astrachan is a partner in the Corporate and Financial Services Department and Co-Chair of the Capital Markets Practice Group of Willkie Farr & Gallagher LLP in New York. From 2001 to 2007, Mr. Astrachan was the managing partner of Willkie's London office. Mr. Astrachan has broad international corporate and securities law experience, including representing U.S. and international corporate, private equity and investment banking clients in mergers and acquisitions, securities offerings, joint ventures, and private equity transactions. Mr. Astrachan regularly represents corporations and their boards on governance matters.

Chambers USA (2014) ranks Mr. Astrachan among the leading individuals practicing Corporate/M&A Law in New York. Mr. Astrachan is a member of the American Bar Association and the International Bar Association, where he is Vice-Chair of the Securities Law Committee. He has lectured frequently at the IBA and at the Practicing Law Institute and is an annual contributor to *The Business Lawyer*'s "Annual Review of Federal Securities Regulation."

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