#MeToo

TIME'S UP

Grant & Eisenhofer
GOVERNANCE BRIEFING

Shareholder & Fiduciary Duty in Light of the **MeToo** Movement

Olav Haazen
ohaazen@gelaw.com
+1 347 841 8841

485 Lexington Avenue
29th floor
New York, N.Y. 10017

Guus Warringa
gwarringa@gelaw.com
+31 6 303 299 68

Amsterdam, WTC
Zuidplein 36
Amsterdam 1077 XV

www.gelaw.com

Grant & Eisenhofer
GOVERNANCE BRIEFING

Shareholder & Fiduciary Duty in Light of the **MeToo** Movement

Olav Haazen
ohaazen@gelaw.com
+1 347 841 8841

485 Lexington Avenue
29th floor
New York, N.Y. 10017

Guus Warringa
gwarringa@gelaw.com
+31 6 303 299 68

Amsterdam, WTC
Zuidplein 36
Amsterdam 1077 XV

www.gelaw.com

The Economist

Behind closed doors

American business and #MeToo

By David A. Katz and Laura A. McIntosh
September 27, 2018

"I DIDN'T wait for a pay cheque. I didn't tell anyone. I was scared, ashamed and just ran," is how Daniela Contreras recalls sexual harassment—as she now knows to call it—by her employer when working as a nanny in her teens. Twenty years later she feels able to say "This happened to me", and works with the National Domestic Workers Alliance in New York to ensure others can do so sooner. Over the past year she has seen a big increase in women phoning, almost daily, for legal advice. #MeToo catalysed this rise, she says. "The hashtag helped start the conversation by writing it, saying it and sharing it: 'This happened to me.'"

It is almost a year since revelations emerged about the behaviour of Harvey Weinstein, a film-studio boss charged with multiple counts of rape and sexual assault. In response Alyssa Milano, an actor, invited anyone who had been harassed or assaulted to tweet #MeToo. The hashtag has since been shared over 15m times. Victims of harassment in workplaces of all sorts, from S&P 500 companies to small-and medium-sized firms to startups, have come forward in unprecedented numbers to share their harrowing experiences.

Many powerful men have been forced out. Earlier this month one of the most-praised bosses in media, Les Moonves, the chief executive of CBS, was forced to leave following accusations of sexual harassment (which he denies). A handful, including Mr. Weinstein, await trial. This week Bill Cosby, an actor once known as America's Dad, became the first post-MeToo A-lister to be sentenced to prison.

Firms are under growing pressure to change how women are treated at work. Not a week goes by without a fresh example of an organisation finding itself in the spotlight. Earlier this month workers at McDonald's, one of several firms being sued by workers, protested against a culture of harassment, replacing the "M" on their MeToo banners with the golden arches. In the same week the board of the New York Review of Books, under pressure from advertisers, pushed out its editor, Ian Buruma, after he published a controversial essay by Jian Ghomeshi, a Canadian broadcaster and alleged abuser. . . .

Read the full online article [here](#).
(*subscription may be required*)

THE WALL STREET JOURNAL.

Big Investors Seek a #MeToo Clawback

By Laurence Fletcher
September 23, 2018

Some venture capitalists are looking for a way to fine companies hit by harassment scandals.

As the #MeToo movement continues to sweep through U.S. corporations, some venture capitalists are pushing a proposal that would make it easier for big investors to extract fines from companies embroiled in such scandals.

Arguing that sexual-misconduct cases pose a financial threat to businesses and their shareholders, the group is working to craft a standard clawback clause that could be added to agreements between investors and private-equity managers, and between managers and the firms they invest in. Such language, the venture capitalists say, would help discourage bad behavior by giving investors a way to automatically fine firms whose employees engage in misconduct and/or harassment.

A similar push is already under way in the mergers-and-acquisitions arena, where buyers increasingly are being advised to add sexual-misconduct-disclosure clauses to deal documents.

The moves come as the business world grapples with a series of sexual-misconduct allegations that have taken down Hollywood producer Harvey Weinstein, and led to the resignations of Wynn Resorts CEO Steve Wynn and CBS Corp. CEO Leslie Moonves, among others. (Mr. Weinstein has pleaded not guilty to charges that include rape and predatory sexual assault and denied all allegations of nonconsensual sex. Mr. Wynn has said it is "preposterous" that he would assault a woman; Mr. Moonves has denied assaulting or forcing himself on any women, and has denied punishing women professionally who rebuffed his advances.)

Although the #MeToo movement's cost to investors has been less clear in a bull market that is lifting the shares of many companies, proponents of clawback clauses say inappropriate behavior by top executives is evidence of weak corporate governance and a flawed culture. That, they say, can manifest in legal costs, lost time, management distraction and negative publicity. . . .

Read the full online article **here**.
(*subscription may be required*)

NEW YORK POST

Wall Street's #MeToo moment could hit multimillion-dollar tipping point

By John Aidan Byrne
April 7, 2018

Wall Street's #MeToo moment is going to be huge if the dollars from sexual harassment settlements ever hit the fan, according to a new survey — and disgruntled financial service workers.

Forget about Harvey Weinstein and the world of celebrity high rollers. More than 1 in 5 workers in cash-rich wealth management — from the large firms to smaller broker-dealers peddling stocks, bonds and planning finances — report a "high prevalence" of sexual harassment in the workplace, according to a survey by SourceMedia, a financial media company.

And it's not much better in other pockets of high finance.

"Like all women who work on Wall Street, I sometimes feel like I am at a frat party," Rita Robbins, founder and president of Affiliated Advisors in New York, admitted to The Post, referring to the mostly locker-room bad-boy culture she says pervades financial services. "Virtually every woman I know has a story or four about horrific behavior that they have been subjected to."

The revelations of inappropriate sexual innuendo and playboy antics by co-workers and some bosses come as Wall Street so far remains largely unscathed by #MeToo announcements.

But insiders say if financial industry victims break their silence, the consequences could reverberate from Main Street to Wall Street, with multimillion-dollar lawsuits and settlements.

"Sadly, we have felt powerless due to long-standing, corporate culture attitudes," said Robbins, a female boss who oversees 110 employees.

Insiders and the latest survey reveal how a testosterone-fueled environment rampant with inappropriate behavior bedevils female Wall Street workers. . . .

Read the full online article **here**.

Pensions&Investments

Money managers get caught up in #MeToo movement

By Christine Williamson
September 3, 2018

In the year since Harvey Weinstein's alleged sexual assaults came to light, institutional investors have begun to ask external money managers about their firms' histories on sexual misconduct.

The nascent trend to ask money managers to disclose sexual harassment and assault settlements was sparked by the #MeToo movement, which reignited last October after women all over the world shared their stories of sexual abuse in response to the Weinstein revelations, industry observers said.

"The financial industry hasn't found its Harvey Weinstein yet, but there's no reason why the money management industry should be exempt from sexual misconduct incidents, especially because it's such a macho industry," said Andrew Borowiec, executive director of the Investment Management Due Diligence Association, New York.

The $358.9 billion California Public Employees' Retirement System and University of Texas/ Texas A&M Investment Management Co., which manages $44.9 billion in endowment and operating funds, are among the first asset owners to incorporate specific requests for sexual misconduct information in their money manager due diligence process.

Added due diligence
Momentum among pension funds, endowments, foundations and other asset owners to add specific reviews of sexual misconduct settlements to their standard operational due diligence of money managers is slowly growing from a low base, sources said.

Just 11% of asset owners asked money managers about the firm's sexual harassment history as part of routine due diligence, showed the results of an IMDDA survey conducted early this year.

But the association is getting a lot of questions from its 400 members — 87% of which are institutional investor operational due diligence officers — about how best to incorporate assessment of sexual misconduct during due diligence, Mr. Borowiec said. . . .

Read the full online article **here**.
(*registration may be required*)

New York Law Journal

Shareholder Activism Is the Next Phase of #MeToo

By David A. Katz and Laura A. McIntosh
September 26, 2018

In their Corporate Governance Update, David A Katz and Laura A McIntosh write: As the #Me Too movement continues to make itself felt in all facets of American life, public company boards of directors that are newly focused on the issue of workplace harassment have seen corporate responses evolve. In recent months, many boards have overseen the addition of anti-harassment policies to corporate codes of conduct, the establishment of procedures for addressing allegations, and the enhancement of employee training at all levels.

As the #Me Too movement continues to make itself felt in all facets of American life, public company boards of directors that are newly focused on the issue of workplace harassment have seen corporate responses evolve. In recent months, many boards have overseen the addition of anti-harassment policies to corporate codes of conduct, the establishment of procedures for addressing allegations, and the enhancement of employee training at all levels.

Directors are taking proactive steps toward educating themselves and looking deeply into the issues involved, and many have highlighted it as a priority for the senior management team. Boards that have successfully installed the nuts and bolts of good governance in this area can now step back and consider the larger project of gender equality in corporate America, in which sexual harassment, corporate culture, gender pay equity, and gender diversity are related issues. Shareholder activity in all four of these areas-which we will call collectively, “corporate equality”-has markedly increased, and boards looking ahead to the next phase of corporate governance activism should take note of this trend and try to be proactive as opposed to reactive.

Board Accountability for Corporate Culture

Earlier this year, pension fund giant CalPERS revised its corporate governance principles, adding a new policy emphasizing the board’s role “in setting a high-performance corporate culture,” and urging every public company board to “develop and disclose its efforts towards establishing effective corporate culture, including its anti-harassment policy.” The new policy supports disclosure of all settlements, including sexual harassment settlements, involving an executive or member of the board. . . .

Read the full online article **here**.

CORPORATE COUNSEL

Does Investor Litigation Over #MeToo Stand a Chance?

By Kristen Rasmussen
September 04, 2018

A recently filed securities class action against CBS is the latest attempt by investors to hold company directors and officers responsible for an executive's alleged sexual misconduct. But will the courts buy it?

From claims of defamation to hostile work environment, the #MeToo movement has spawned its fair share of lawsuits.

And a recently filed securities class action suit against CBS Corp. is the latest attempt by investors to use the courts to hold company directors and officers responsible for alleged misconduct within executive ranks.

In this case, a plaintiff-shareholder claimed that CBS filings with the U.S. Securities and Exchange Commission were false and misleading, in violation of federal securities laws. The company had affirmatively declared in filings that all its directors and employees upheld a code of conduct that included "a bias-free and harassment-free workplace."

The suit, filed Aug. 27, stemmed from an article published last month in The New Yorker magazine that included six women's allegations of sexual harassment against network CEO Leslie Moonves.

After the article was published, CBS' stock price fell more than 6 percent, causing "significant losses and damages" to the potential class members, according to the complaint.

And it's not the first suit of its kind involving false statements and omissions in the context of #MeToo. In March 2017, Signet Jewelers Ltd. was sued in a securities fraud class action based on the company's alleged failure to disclose sexual harassment allegations against executives in an ongoing arbitration. . . .

Read the full online article **here**.