

Green Boardrooms?



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53 Connecticut Law Review 305 (2021)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3569303

5th Annual Oxford Business Law Blog Conference

Business Law and the Transition to a Net Zero Carbon Economy

May 27, 2021

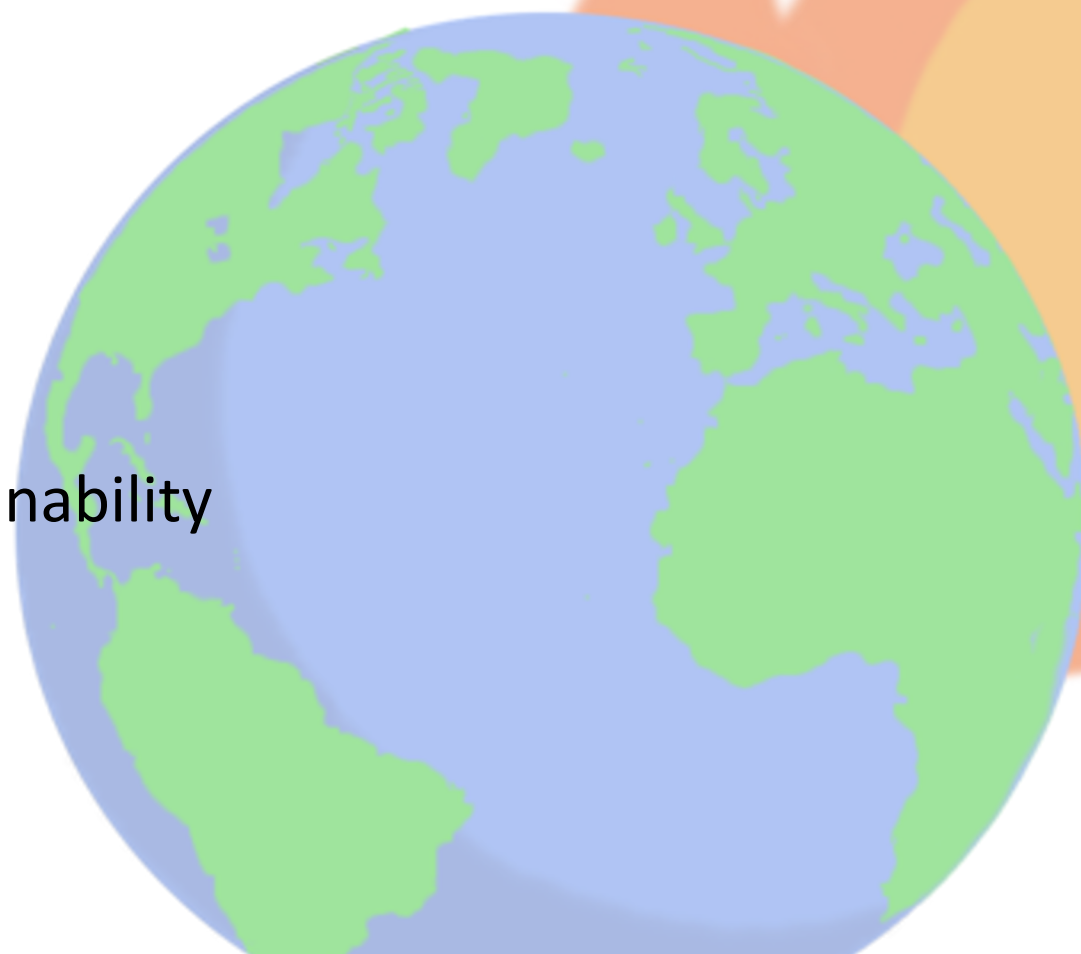
Overview

- Corporate/securities law and climate change
- Disclosure
- Shareholder engagement
- Fiduciary duty
- Future possibilities



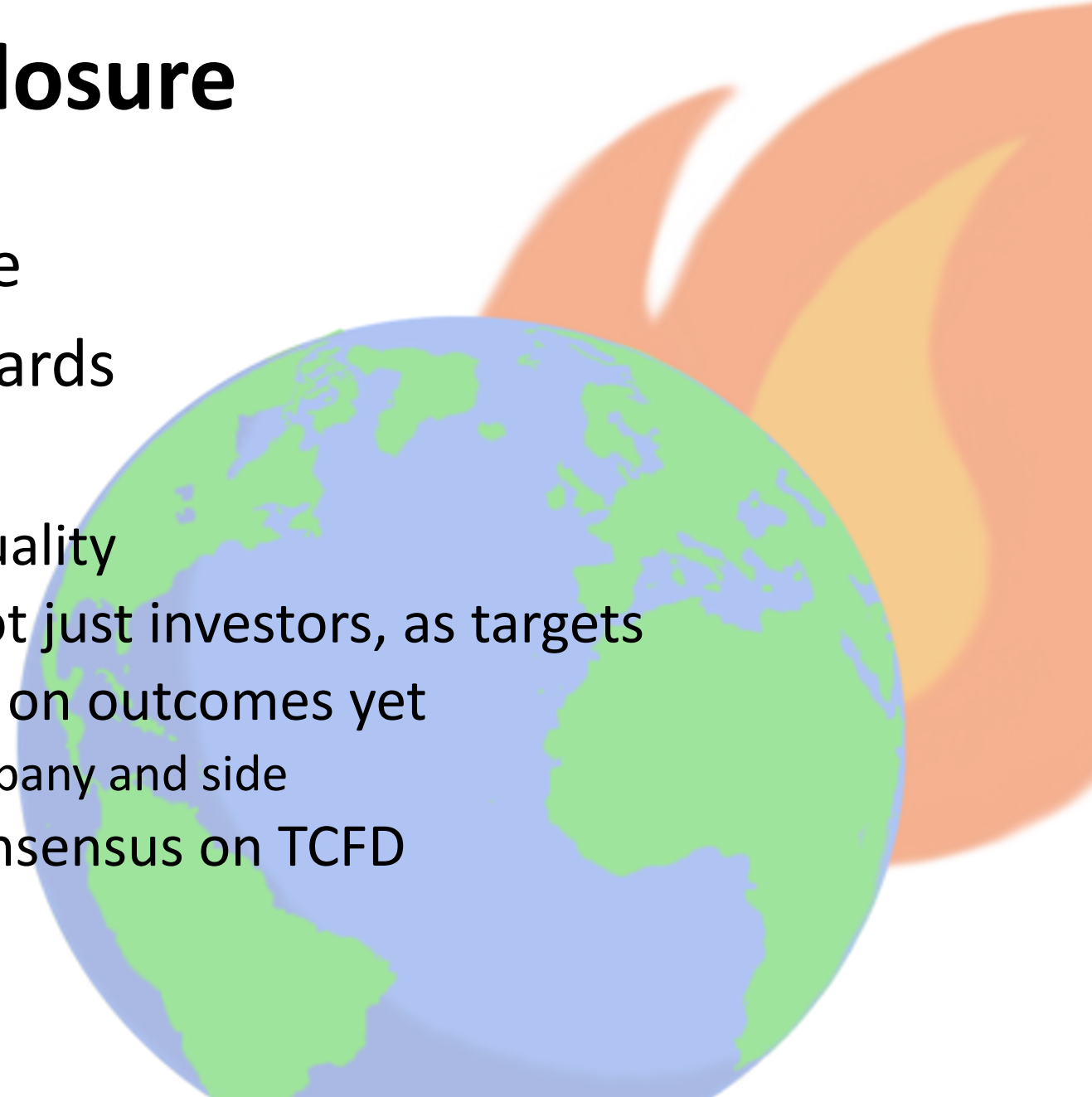
Corporate/securities law and climate change

- Corporate governance debate
 - Long-term shareholder value
 - Friedman on maximizing profits
 - Stakeholder proponents
- Environmental debate
 - Pragmatic middle
 - Focus on other legal regulation
 - Corporate reform towards sustainability
- Methodology
 - Comparative (US/Australia)
 - Interviews



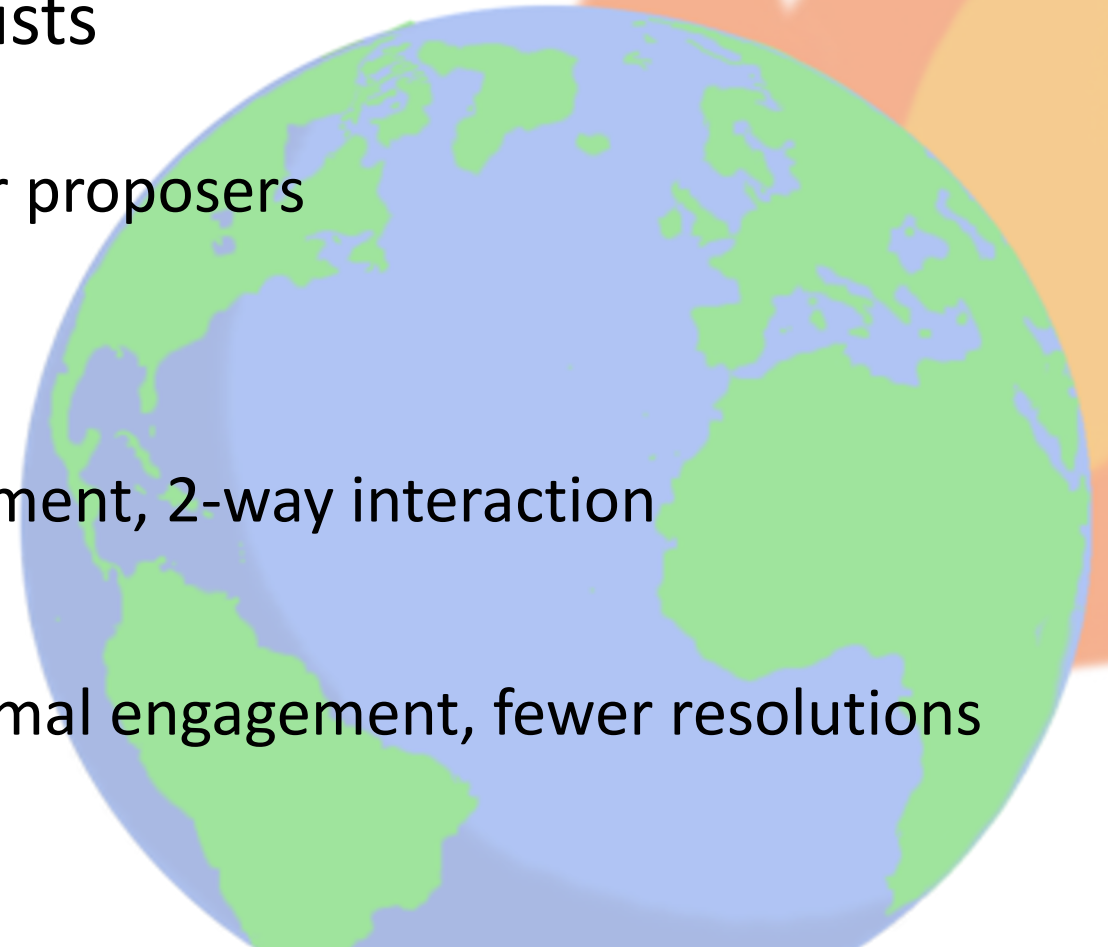
Disclosure

- Limited mandatory disclosure
- Proliferation of private standards
- Interviews:
 - Inconsistency, highly mixed quality
 - Customers and employees, not just investors, as targets
 - Little evidence of much effect on outcomes yet
 - Difference in optimism on company and side
 - Australia similar, but more consensus on TCFD



Shareholder Engagement

- Formal (Rule 14a-8 shareholder proposals) and informal
- Big Three, pension funds, activists
- Legal developments
 - 14a-8: limits on shareholding for proposers
 - Ordinary business exclusion
 - ERISA fiduciary rules
- Interviews:
 - Growth in both types of engagement, 2-way interaction
 - Various types of proposals
 - Limited effects so far
 - Australia: longer history of informal engagement, fewer resolutions



Fiduciary Duty

- *Caremark* duty to oversee legal compliance
 - Extremely difficult for plaintiffs, but some movement in recent cases
- Interviews:
 - CC effects still too far off for some businesses
 - Much variation in how monitoring handled at board and officer level
 - Trend towards CC expertise at board level
 - Threat of suit not on radar screen
 - Australia: settled case against superannuation fund, prominent legal opinions, suggest duty may have traction, but practice still highly variable



Future Possibilities

- Framework:
 - Some support for all 3 corporate governance positions
 - Strong stakeholder reform v. pragmatic long-term shareholder value reform
 - Disclosure:
 - Strong: New statute, agency, materiality tied to stakeholders
 - Pragmatic: New SEC regs (SASB?), materiality tied to financial
 - Engagement:
 - Strong: Stakeholder empowerment
 - Pragmatic: Roll back Trump rules, suggestions for SH proposals
 - Duty:
 - Strong: Duty to avoid environmental harm
 - Pragmatic: Potential for *Caremark*?
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