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: Choi, Stephen J. (UC)

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: Klausner, Michael ()

Black, Bernard S. ()

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: Black, Bernard S. ()

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: Fox, Merritt B. ()

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: Fox, Merritt B. ()

Klausner, Michael ()

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08:30 ~ 09:00

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4 : (I)
: Gordon, Jeffrey N. ()
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: Milhaupt, Curtis J. ()
Choi, Stephen J. (UC)
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: Klausner, Michael ()
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: Black, Bernard S. ()
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: Gordon, Jeffrey N. ()
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12: NGO:

: Milhaupt, Curtis J. ()

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: Choi, Stephen J. (UC)

Fox, Merritt B. ()

16:10 ~ 16:30

16:30 ~ 18:00

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I **1: (Shareholder Class Action)**
1:
(Securities Class Actions in Korea?)
: Stephen J. Choi (UC)

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- (frivolous suits) :

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- (agency problem) :

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This essay examines the desirability of introducing securities class actions into Korea. Class actions offer the promise of energizing private enforcement of the securities laws, including in particular antifraud liability. For shareholders of large, publicly-held corporations, the individual benefits of pursuing a fraud action are often outweighed by the considerable costs of litigation. Without a class action, many fraud lawsuits may simply go unfilled. Nonetheless, the essay explores three related problems with class actions: (a) the problem of frivolous suits (and the need to allow meritorious suits); (b) the lack of incentive of plaintiffs' attorneys to focus on smaller companies (a potentially acute problem in Korea); and (c) the agency problem between plaintiffs' attorneys and the plaintiff class. Examining evidence from the United States (in particular on the impact of the Private Securities Litigation Reform Act of 1995) the essay addresses the feasibility of solving these three problems in the specific context of Korea. Korea, for example, has a smaller capital market with few large companies. Just as significantly, Korea has relatively few large law firms capable of bringing (or defending) a large scale class action. The essay also examines several policy options available to those who support class actions in Korea.

2:
(Empirical Analyses of Corporate Governance)

2:
(Market reaction to public disclosure on equity investment in affiliated firms)
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It is argued that the Korean economic crisis in 1997 was caused by structural weakness of the corporate and financial sectors which is deeply related to poor corporate governance system. After the crisis, the government has introduced many reform measures including those for the public disclosure system. New regulations on public disclosure extend the coverage including transactions with the largest shareholders and adopt the fair disclosure principle.

In order to evaluate whether public disclosure can play an important monitoring role, we investigate whether the stock market responds to publicly disclosed information. In particular, this study investigates how the stock market responds to transactions with the largest shareholders. Employing an event study method, we empirically show the stock market responses to equity investment into affiliated firms from January 1996 to December 2000.

The test shows that until 1998 the stock market did not respond differently to investment into affiliated firms and non-affiliated firms. However, since 1999 the stock market has responded negatively to the announcement of investment into affiliated firms, while it has responded positively to investment in non-affiliated firms. Investment into affiliated firms for a ten day window period yields around negative 1% cumulative average abnormal stock market return while investment into non-affiliated firms yields a 5% cumulative return.

These results suggest that stock market participants perceive that investment into affiliated firms does not increase the firm values, rather it destroys the firm values. These results are consistent with an argument that equity investment into affiliated firms increases the control by the largest shareholder through an increase in intra-group shareholding, which in turn increases the disparity between control rights and ownership rights. A large disparity between ownership and control rights provides entrenched controlling shareholders with an incentive to pursue their private benefits at the cost of minority shareholders.

The stock market incorporates relevant and material information into its price. As the stock prices reflect the market's evaluation on firm management actions and decisions, the stock market can play an important monitoring role by rewarding value enhancing activities and punishing value destroying actions. As the market plays a monitoring role when proper information is provided, the results of study suggest that government actions should focus on how to ensure timely, accurate disclosure on firm activity rather than direct intervention.

2:
(Empirical Analyses of Corporate Governance)

3:
(Predicting Firms' Corporate Governance Choices: Evidence from Korea
: Bernard S. Black()
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(KDI)

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- 2001 (KSE)

(Corporate Governance Index: CGI)가

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This paper contributes to a new literature on how regulatory, industry, and economic factors affect firms' corporate governance practices. In an earlier paper (Black, Jang and Kim, *Does Corporate Governance Affect Firms' Market Values? Evidence from Korea*, 2003), we construct a corporate governance index (*CGI*) for almost all listed Korean public companies and report strong evidence that higher *CGI* predicts higher firm market values. In this paper, thus armed with a strong index, we investigate the factors that predict a firm's score on *CGI* and the five subindices that comprise *CGI* (for shareholder rights, board structure, board procedure, disclosure to investors, and ownership parity). We explore the relative importance of regulatory, industry, and firm-specific factors: firm growth, profitability, and other firm-specific factors, industry factors, and regulatory factors. Regulatory factors are highly important. Industry factors are also important. Firm-specific factors are less

important and have only a modest effect on governance, even when they are statistically significant.

Among firm-specific factors, the most significant are size (larger firms are better governed), firm risk (riskier firms are better governed) and long-term profitability (more profitable firms are *worse* governed). Other papers find firm growth to be significant, but use crude industry and regulatory controls. We find that long-term firm growth predicts governance with 2-digit industry dummies but this effect disappears with 4-digit industry dummies. Industry-level growth predicts *CGI* more strongly than firm growth. Need for equity finance (a measure that combines growth and profitability) predicts better governance; this effect is driven by the negative correlation between profitability and *CGI*. Long-term averages of growth, profitability and equity finance need are stronger than short-term averages, suggesting that firms alter governance slowly in response to economic factors. Ownership by the largest shareholder is sometimes but not reliably significant. The effect of growth, profitability, and equity finance need is important for small firms (assets < 2 trillion won), which are subject to weaker governance rules, and for non-chaebol firms (which may have less access to chaebol-supported financing), but not for large firms or *chaebol* firms.

2:
(Empirical Analyses of Corporate Governance)

4:
(Designing Governance Structure for Corporate Bonds in Korea: Empirical Study on Corporate Bond Indentures in Korea)

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Corporate bond markets in Korea have changed drastically since the crisis in 1997. Prior to 1997, corporate bonds were mostly guaranteed by banks and were virtually “disguised bank loans” rather than capital market instruments. After the crisis, however, banks and investment trust companies could no longer afford to provide financial guarantees to bond issuers; accordingly, most corporate bonds issued after the crisis were non-guaranteed bonds. As a consequence, investors begin to realize default risks associated with bond investments, and hence various initiatives were pursued to provide adequate protection for bond investors. The introduction of mandatory standard bond indentures in February 2002 is an example.

This paper empirically analyzes the effect of the introduction of the mandatory Standard Indenture on the cost of bond financing and on protection for bond investors. We collected 389 bond indentures from the Data Analysis, Retrieval and Transfer System (DART) at the Financial Supervisory Service (FSS) for the period of August 2000 to August 2003. Our empirical analysis shows that, despite the introduction of mandatory standard bond indentures, such standard indentures are still a formality in Korea in many respects: the cost of bond financing has not decreased since the introduction of more restrictive indentures (and therefore, greater investor protection) after taking into account borrowers’ credit characteristics (such as credit ratings). We also found that the level of restrictions in indenture covenants had no statistical relationship with either the proxy variables that measured the borrowers’ individual characteristics or the degree of agency problems. In addition, the trustee function in Korea is still regarded as a supplementary service that must be provided by underwriters. As such, the joint appointment of underwriter and indenture trustee is common practice despite problems with potential conflicts of interest. Finally, trustee fees are extremely low and show virtually no variance across agents.

The introduction of standard indentures definitely contributed to the enhancement of the

legal rights of bondholders. Nonetheless, our empirical results show that creating appropriate legal infrastructure is only a necessary first step. For such new infrastructure to function properly, market participants have to adjust their behavior. In Korea, for standard bond indentures to be an effective investor protection mechanism, market participants have to understand and recognize the true legal rights and obligations embedded in such indentures. Lawsuits against negligent trustees in the future should serve such a purpose.

4: (I)
(Enforcement of Corporate Governance (I))

5: :
(Enforcing the Corporate Governance Structure through Court
: the Korean Experience)
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Traditionally derivative suit was not a tool in the legal arsenal of minority shareholders. Recently the Environment has changed drastically, especially after the foreign currency crisis of 1997. Korean government belatedly realized that proper corporate governance was one of the key elements in building an efficient and sound capitalist economy and put much effort on providing necessary institutional reform. Derivative suit had existed in very primitive form even before the currency crisis, but was benefited significantly during the reform wave and

was used extensively thereafter as a device correcting wrongdoings of corporate directors.

We reviewed several landmark cases, including the Korea First Bank case and the Samsung Electronics case. We summarized the legal issues that were tried intensely in the court. Some of them were resolved either by the verdict of the court or by the amendment of related laws. Some of the issues will be resolved with the introduction of class action in security dealings. Still we can identify some remaining issues that will not be resolved automatically without positive effort of the legislative body. Those are (1) the qualification issue when the plaintiff loses its shareholding by the administrative order from the governmental supervisory agency, (2) the introduction of discovery into the derivative suit, (3) the calculation of threshold shareholding in a double derivative suit. We also examined that the current scope of business judgment allowed by the court is appropriate in striking a balance between corporate autonomy and social efficiency.

4: (I)
(Enforcement of Corporate Governance (I))

6: (Outside Director Liability)
: Michael Klausner ()

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‘ (Vigilance Duties) ’

가 (nominal liability) , (actual liability)

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Bernard Black Brian Cheffins 가 ‘ 가
 (Outside Director Liability Across Countries, 2003) ’ 6 (, ,)

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Outside directors can do a bad job, sometimes spectacularly. Yet outside directors of U.S. public companies who fail to meet what we call their "vigilance duties" under corporate, securities, environmental, pension, and other laws almost never face actual out-of-pocket liability for good faith conduct. Their nominal liability is almost entirely eliminated by a combination of indemnification, insurance, procedural rules, and the settlement incentives of plaintiffs, defendants, and insurers. The principal risk of actual liability is under securities law, for an insolvent company (which can neither pay damages itself nor indemnify the director) and a seriously rich (hence worth chasing) director, where damages exceed the D&O insurance policy limits and the director does not represent an institution that can indemnify him. The principal sanction against outside directors is harm to reputation, not direct financial loss.

In a companion paper, Bernard Black & Brian Cheffins, *Outside Director Liability Across Countries* (2003), we study six comparison common-law and civil-law countries (Australia, Britain, Canada, France, Germany, and Japan). We find huge differences in legal rules and nominal liability. Securities and corporate law risk recedes, while nominal liability under other laws becomes central. Yet we find a similar pattern of a tiny but nonzero risk of actual liability. This suggests that a barely open window of actual liability is a stable solution, both politically and in the D&O insurance market. A barely open window may also be a sensible policy solution, given the multiple goals of incenting directors to be optimally (not maximally) diligent, wanting directors to be aware of potential liability for misconduct yet not overly risk averse, and wanting good candidates to become directors. The details of where the liability risk comes from may have only a small effect on director behavior.

**I 5:
(Corporate Governance and Relation)**

**7:
(Rethinking the Regulation of Share Repurchases in Korea)
: Jesse M. Fried (UC)**

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This paper concerns how to measure share price accuracy. It is prompted by the fact that many scholars believe that the prices established in the stock market affect the efficiency of the real economy. In their view, more accurate prices increase the amount of value added by capital utilizing enterprises as these enterprises use society's scarce resources for the production of goods and services. More accurate share prices help improve both the quality of choich among new proposed Investment projects in the economy and the operation of existing real assets currently in corporate hands.

The proposition that more accurate share prices improve the efficiency of the real economy implies that promoting share price accuracy is a worthy goal of public policy. It would therefore be helpful to be able to measure whether the policies adopted in fact accomplish this aim. A wide variety of policy measures are implicated here. Does issuer disclosure increase share price accuracy? What is the effect of various restrictions on insider trading and tipping? What is the effect of selective disclosure by issuers to institutional investors or analysts? Should analysts be regulated in some fashion? All of these questions are subjects of unresolved theoretical debates. Good empirical input could be of great value.

Developing a practical measure of share price accuracy, however, is tricky. As will be discussed below, a share price is more accurate if it is a better predictor of a firm's dividends and other distributions to its shareholders over the rest of the life of the firm. How well a firm's share price scores in this regard cannot be determined definitively until the firm's life ends and it liquidates. To be useful for policy making, a measure of share price accuracy must be able to be made earlier, while firms are still operating. Thus scholars have looked for proxies for the definitive measure that can only be made after liquidation. Traditionally share price variance over time has been used as such a proxy. A smaller variance has been interpreted as suggesting a more accurate price. More recently, some scholars have adopted a different measure, called R^2 , which reflects the extent to which a firm's share price moves

with the prices of all the other firms in the economy. A lower R^2 , meaning less co-movement, is taken by these scholars to mean a more accurate price. I will argue here, through a combination of theoretical and empirical analysis, that R^2 is in fact a better proxy measure of share price accuracy than share price variance.

This paper has important implications for Korea. The conclusion that R^2 is a better proxy than variance can help design legal institutions that will promote the development of Korea's capital markets. R^2 is a very adaptable tool. It was initially developed as a result of crosscountry comparisons of stock price behavior. It has already been used to consider the effectiveness, for example, of the various countries' prohibitions on insider trading and it could be used to test various aspects of Korean law. Moreover, its anticipated use studying the U.S. capital market can help resolve theoretical debates concerning the value of regulations relating to matters such as issuer disclosure, insider trading, tipping, selective disclosure and analyst behavior. The light that it can shed on these debates can provide useful lessons for Korea as well since the debates relate to underlying features present in all capital markets.

Compliance duties to the clients, it is desirable to pursue multiple financial businesses in several entities. It is suggested that, since it is inevitable for firms to provide multiple financial services on an integrated basis, either in one entity, several entities or under a holding company structure, the Korean company law and mandate law may have to reflect the reality in financial services area. In this case, a chinese wall operating at a group level may exonerate the representative directors working for a specific division of a firm from the undivided loyalty to the outside clients or the internal shareholders. But it is still unclear whether such qualification of the company law or mandate law is valid. Furthermore, it is neither clear whether these qualification will be applicable for criminal purposes such as insider dealing crime etc.

7: (Boards and Directors)
11: (Boards with a reference to Korean developments)
: Jeffrey N. Gordon ()

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I 8: (II)
(Enforcement of Corporate Governance (II))

12: NGO:
(Nonprofit Organizations as Investor Protection: Economic Theory,
and Evidence from East Asia)
: Curtis J. Milhaupt ()

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SFI(Securities and Futures Institute),
(Shareholder Ombudsman)

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Enforcement problems plague shareholder activism and investor protection in many parts of the world. The importance of solving this problem has led scholars to consider a range of partial alternatives to weak domestic corporate law enforcement regimes, ranging from writing “self enforcing” corporate laws to using cross listings on foreign stock exchanges as a means of bonding firms to higher quality enforcement.

The recent experience of the three largest capitalist market economies of East Asia suggests that there is another partial solution to the problem of weak investor protection and corporate law enforcement, one that has received no theoretical or empirical attention—the nonprofit organization. This partial solution emerges from a puzzle at the center of contemporary East Asian corporate governance: Nonprofit organizations (NPOs) have emerged as arguably the most important corporate law enforcement agents in Korea, Japan and Taiwan. In each system, an NPO holding a portfolio of shares is engaged directly in the exercise of shareholders’ rights to combat corporate fraud and mismanagement, and to improve the investor protection climate. In numerous instances, these organizations have won significant court victories or settlements against management, changing the investor protection climate. This development is puzzling because the defining characteristic of an NPO is the nondistribution constraint. That is, while nonprofits are not prohibited from making profits, they are prohibited from distributing them to their owners. Why are three organizations operating within the nondistribution constraint—rather than institutional investors or individual shareholders represented by plaintiffs’ attorneys—the principal shareholder activists cum corporate law enforcement agents in this region?

This paper analyzes the role of NPOs in East Asian corporate governance, and applies economic theory on the existence of nonprofits as suppliers of public goods (along with several complementary theories) to explain the rise of NPOs as suppliers of investor protection in the region. The paper also examines the academic and policy implications of the East Asian experience. Academically, the NPO as a corporate law enforcement mechanism is a highly distinctive illustration of functional convergence in corporate governance: several societies have spontaneously generated substitutes for the attorney-oriented incentive mechanisms relied upon in the United States to enhance investor protection. Yet each NPO displays its own unique structure and strategy, differences that can be tied directly to the distinct domestic legal and political structures in which they operate. At the level of law reform, for transition economies the NPO has several advantages as a corporate law enforcement device, particularly in societies reluctant or unable to transplant the U.S. “attorney as bounty hunter” model of law enforcement. First, the nondistribution constraint inherent in the NPO form provides a built-in check on frivolous litigation. Second, shareholder activist NPOs seek to use and improve local law enforcement institutions, while most of the alternatives discussed in the literature involve abandoning weak local enforcement regimes.

Ⅰ 8: (II)
(Enforcement of Corporate Governance (II))

13:
(Ineffective Derivative Suits and Corporate Control Market in Korea)
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Several researchers are concerned about the attorney-driven derivative suits. The point is that the derivative suits are very likely to end up with settlement, which does not depend on the merit of the suits, and therefore they have no effect of improving corporate governance system. Since the final outcome does not depend on the merit of the suit, no threat or deterrence may not be generated. In fact, it is very hard to resolve this issue perfectly, because both parties have strong incentives to settle. Moreover, any effort to regulate managerial incentive to settle may raise the expenses that corporations must incur in order to attract good managers. I argue, however, that anti-abuse regulation should not be incorporated in the statute or be taken by the court, since such provisions are likely to paralyze the derivative suit mechanism itself. Allowing attorneys to pursue adequate profits is more important than depriving them of the profits in case of settlement, if the legal system decided to adopt a derivative suit.