CEO Duality In Listed Corporations: Is There An End To The Dichotomous Debate?

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Abstract

CEO duality has been the subject of debate for over twenty years and shows no signs of abating.¹ With conflicting theoretical and empirical evidence underpinning the debate the practice has fluctuated, investor perception of board leadership structure has altered, international regulation has reacted, scholarly conceptualizations of duality have become overly complex, and the need to understand duality and conclude the debate has increased.² This thesis explores duality in listed corporations and aims to form an appropriate solution to end the dichotomy. My solution requires one to confront misunderstandings which have led to a traditional insistence towards structural reform and prolonged the contentious debate, and recognize an underlying contention which needs to be resolved to bring finality to the debate. I argue finality is possible if a process oriented approach is adopted and corporations recognize the need to be technically equipped to deal with leadership structures in the modern corporate arena.

¹ Krause, Semedeni, CEO-Coard Chair Separation: If It Aint Broke, Don't fix it (Conference Board Director Notes 2013)
Acknowledgments

This thesis is for my Mother and her constant love, support and encouragement; all that I am, and all that I hope to be I owe to her. I also extend great thanks and appreciation to my supervisor Professor Jeffrey Macintosh for his expert teachings and his patience.
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Bibliography
1 Introduction

Corporate governance, traditionally defined as the system by which corporations are directed and controlled,\(^3\) has become an increasingly topical and important matter in recent years-fueled by corporate scandals and disasters such as Enron, HIH, Worldcom and more recently the global financial crisis which have made fault lines in governance practice more apparent than ever.\(^4\) With the board of directors baring the responsibility of ensuring effective corporate governance practices, it is unsurprising that it is the leaders and the most powerful officers of the board-the Chairman and the Chief Executive Officer (CEO)-\(^5\) facing the blame for corporate scandals, and vilification for corporate disasters.\(^6\) With public confidence in need of being restored and maintained, and with investors more prepared than ever to pay a premium for good governance,\(^7\) I believe it is necessary to bring finality to the dichotomous debate of CEO duality, concluding one of the most contentious and longstanding corporate governance debates.\(^8\)

1.1 Corporate Governance

The board of directors collectively hold the position of highest governing authority in the corporation, responsible for the long term success of the company.\(^9\) Shareholders in publicly held corporations appoint the board of directors, overseen by the Chairman, who are legally obliged to represent their interests by monitoring and supervising managers to ensure their behavior is aligned with the interests of the shareholders, as well as providing opinion and direction for key

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\(^5\) Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65

\(^6\) O’Hara “Asleep at the Switch? Corporate Boards Culpability in the 2008 Financial Crisis” (2009) 2 The Investment Professional 3

\(^7\) Siladi, The Role Of Non-Executive Directors In Corporate Governance: An Evaluation (Faculty of Business and Enterprise, Swinburne University of Technology 2006)

\(^8\) Krause, Semedeni, CEO-Croard Chair Separation: If It Aint Broke, Dont fix it (Conference Board Director Notes 2013)

strategic business decisions and ensuring the effective implementation of strategy. It is the managers, led by the CEO, who are evaluated by the board, ensuring they effectively fulfill their responsibility of implementing such strategy and heading operational activity. With the Chairman and CEO therefore being the most powerful officers in charge of guiding the corporation to success, it is instantly clear to see why the practice of duality—whereby the Chairman and CEO positions are held by the same person and the individual responsibilities of the same are seemingly merged—is the most widely discussed and contentious corporate phenomena.

The extremely controversial debate of duality has endured for over twenty years and yet remains an unanswered corporate governance issue. With effective corporate governance requiring “proper incentives for the board and management to pursue objectives that are in the interest of the company and its shareholders, and effective monitoring of the same”, it is clear that the practice of duality is highly contentious, when considering duality apparently leads to a concentration of power in one potentially self-serving person, reducing the monitoring function of the board, lessening the ability to detect managerial incompetence and corruption and prevent corporate disasters, therefore frustrating the underlying basis of the corporate entity. However, with duality also being said to enhance effective corporate governance by enabling unity of command, and allowing shareholders to be served more efficiently through a clear, knowledgeable and effective leader, the practice of duality has been referred to as a “double edged-sword”, because of the inherent trade off between independent oversight and unity of command it produces—making it understandable as to why the practice is highly contentious.

In my thesis I propose to end the debate of duality as opposed to further adding to it. I believe it is necessary to bring finality to the debate once and for all because of the importance of corporate governance. While some argue that corporate governance it merely a box ticking

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12 Siladi, The Role Of Non-Executive Directors In Corporate Governance: An Evaluation (Faculty of Business and Enterprise, Swinburne University of Technology 2006)
I insist that corporate governance practices are integral to achieving corporate health and success. This is especially so with the governance issue of duality. This is because it concerns corporate leadership and leadership faces responsibility for determining the direction of the corporation and accountability for the corporation’s performance. Effective corporate governance practices enhance the corporation’s image in the public eye, with self-policing corporations considered responsible and worthy of investor capital, whereas “corporations without a system of effective corporate governance practices and structures are likened to a body without a soul or conscience”. Effective corporate governance also plays an inherently major role in national and international economic stability, with corporations and their governance practices having the ability to influence the provision of appropriate environments for economic growth and societal welfare. Thus it is widely accepted that corporate governance practices and in particular the practice of adopting an effective corporate leadership structure is of inherent importance internally to the corporation and its investors, and externally to society. Policy makers have become increasingly aware of the contribution good corporate governance makes to financial market stability, investment and economic growth, corporations better understand how good corporate governance contributes to their competitiveness, and investors have taken on an active monitoring role in order to ensure good corporate governance practices. Yet in order to gain the benefits associated with effective corporate governance such practices need to be determined and resolved. With the leadership debate remaining contentious and inconclusive, this leaves corporations open to attack for ineffective practice, and corporations, investors, international markets and economic welfare vulnerable to the effects of such.

1.2 Listed Corporations

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18 Waseem, “The Effect Of Corporate Performance of Jordanian Companies” (2011) 11 International Journal Of Humanities And Social Science 4
Corporate governance, and in particular board leadership structure, is particularly important in stock exchange listed corporations. This is because listed corporations are mandatorily of sizable scale in terms of equity and effect and have the greatest ability of significantly impacting and influencing national and international markets, society and the economy.

Stock exchanges, alongside capital market regulators and investor organizations, have become key players in developing corporate governance codes and recommendations, and determining and influencing effective governance practice. Since the promulgation of the OECD Principles of Corporate Governance\textsuperscript{19} stock exchanges have enlarged their regulatory role to embrace a wider palette of corporate governance concerns, including the matter of duality-issuing rules on the same, requiring ongoing disclosure and maintenance requirements, monitoring aspects of existing governance frameworks, with compliance largely successful due to underlying threats, most significantly, the threat of de-listing. Corporations desire listing status and choose to comply with such requirements, allowing stock exchanges to regulate their leadership practices, due to stock exchanges being the most important source for corporations to raise funds and providing liquidity of securities. Meeting all listing requirements and one’s presence on a stock exchange also signals a certain amount of stability and credibility of a corporation, and the more stringent the listing requirements, the greater the indicator of the quality of a corporation-just some of the considerations investors make when considering investment.

While some assume that the magnitude of listed corporations make them more inertial to change, with leadership structure having little, if any impact upon their practice and performance-I oppose and argue that it is in fact the magnitude of listed corporations which enhances the gravity and pertinence of the debate of duality, making the debate all the more crucial to conclude, due to this greater impact. This is why I shall be focusing on listed corporations, because if there is a corporate governance issue whereby its impact upon corporate performance remains unclear, then it is extremely important to resolve the debate as opposed to allowing it to continue dichotomously, through inertia, for another twenty years. Leaving the debate open for contention only means listed corporations are setting themselves up for potential mismanagement, failure,

\textsuperscript{19} OECD, “OECD Principles Of Corporate Governance” (2004)
scandals and corporate disasters\textsuperscript{20} due being unaware of the true effect of their corporate governance leadership practice, merely due to convenience.\textsuperscript{21} If the debate was concluded, it would have the ability to shed light on corporate governance practices and enable the determination of an optimal practice which listed corporations could adopt in order to enhance their performance; enabling the maximization of shareholder returns, an increase in investor interest, contribute to societal confidence, assist in the development of a robust economy and uphold stock market vigor.

1.3 Corporate Scandals

The need to conclude the debate is only intensified when considering it is listed corporations around the world who are continually hitting the headlines for diverse scandals caused by the ill effects of ineffective corporate leadership practice, with the Chair and CEO as leaders of the corporation typically facing the vilification.\textsuperscript{22} Thus in order to prevent corporate scandals, instances of mismanagement and wrongdoing in an attempt to avoid malpractice and corporate collapse, and in order to uphold the intention underlying corporate governance practices of increasing corporate accountability, effective corporate governance practices need to be decisively determined and executed effectively. This is increasingly being argued as a necessity after the financial crisis, in the wake of the meltdown of major stock markets around the globe and the damaged economies around the world. This is because of such being an extraordinary example of the effect of ineffective corporate governance mechanisms-with duality itself having not only being a significant contributor to the crisis,\textsuperscript{23} but also having attributed the majority of the blame in the many failings due to a substantial majority of the corporations at the heart of the economic meltdown having practiced duality before the crisis erupted.\textsuperscript{24}

\textsuperscript{20} Cheng, “Board Composition, Regulatory Regime And Voluntary Disclosure” (2004)

\textsuperscript{21} Waseem, “The Effect Of Corporate Performance of Jordanian Companies” (2011) 11 International Journal Of Humanities And Social Science 4


\textsuperscript{23} The Steering Committee, “Toward Effective Governance Of Financial Institutions” (2012) Group Of Thirty

\textsuperscript{24} Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65
With corporate boards, the individuals that comprise of them, and most notably the leaders of the corporation continuing to face “tremendous responsibility for our current economic predicament”,25 and following the continuing trend of accusation which initially began in the early 2000’s towards duality for failures of major commercial giants,26 duality is itself now attributed with providing lack of board oversight and ineffective corporate performance.

However, for every example of failure and catastrophe blamed on dual leadership such as the ‘London whale’ trading scandal at JPMorgan Chase, there is a counter example of a government bailout for a corporation where the leadership roles were split, and despite the acknowledgement that high-profile corporate scandals such as Enron and WorldCom which centered around CEO corruption, did not themselves practice a dual leadership structure,27 after the financial crisis it has only become more common for listed corporations to come under fire from activist shareholders, institutional investors, proxy advisory firms, and regulators who aim to achieve independent leadership on the boards. This has led to the issue of separating the Chair and CEO roles to be the most contested governance debate to continue for over twenty years, with there being no sign of it abating. Even academic papers and practitioner-oriented literature routinely call for separation of the roles, as do a variety of best practice codes and guidelines, due to the mere assumption that separating the positions of Chair and CEO will facilitate board independence, which will in turn lead to better detection of managerial corruption or incompetence through enhanced oversight of the CEO through increased information flow to the board of directors.28 Politicians and the public at large have been quick to assume the same, causing a trend of vilification towards former CEO’s of failed institutions, such as Fuld of Lehman Brothers, and deposed CEOs of corporations on government life support such as Goodwin, former CEO of the Royal Bank of Scotland. However, corporate leaders and some associations continue to respond to the debate by resisting a “one size fits all” approach to


28 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
corporate leadership structure, acknowledging the benefits duality has upon corporate performance due to unity of command. Such continued contention towards leadership structure, and more specifically duality leads one to consider that duality is in fact being used as a scapegoat for criticism and blame by many in an attempt to explain corporate failures due to bad governance and to try and restore investor and societal confidence. This is because vilifying leadership structure provides a facile way of monitoring and measuring change, which is easily susceptible to investor influence, which lessens potential harsh investor repercussions in future occurrences of corporate failings. Although this has been effortless to get away with due to there being no verifiable understanding of duality and its effects upon corporations at present, I argue that this should no longer be permitted. All this is doing is shifting focus away from considering and overcoming any crucial underlying issue of board process which may in fact be attributable for the prolonged debate, which is only acting to continually enrage the debate and increase the risk of further corporate scandals hitting the headlines in the future due to going unacknowledged. I believe moving away from the traditional approach to duality is a possibility, because corporations are becoming increasingly aware of the need to not only practice what is conventionally considered to be effective corporate governance, but to find alternative, unconventional corporate governance methods to remain true contenders in the competitive corporate environment corporations are finding themselves in, in modern, contemporary markets.

1.4 My Thesis

I believe the time has come to bring finality to the debate of duality, which is what I aim to achieve in this thesis. Others continue to try and explain the underlying theoretical premiss of duality, ascertain whether or not duality enhances corporate performance or affects numerous other variables, and others have even tried to accumulate all literature and research in the hope of providing an overriding explanation of the practice of duality. With no undeniable and irrefutable conclusion having been made as I shall discuss below, we are left with a vast amount of dichotomous, contentious and conflicting information, which provides a basis for the debate to progress through inertia indefinitely and remain an unanswered matter of corporate governance.

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however, do not propose to add to the debate—I propose to end it. I shall do this by acknowledging the international practical reality of duality, considering the debates continuance, deliberating literary depiction of the practice, explaining its theoretical underpinnings, and reviewing the debates empirical state, but most significantly of all, reviewing the past twenty years of the debate will enable me to conclude whether finality can be brought to the debate of duality. Determining that this is infact a palpable possibility, I shall not only express why this is practicable, but shall convey how this is so. Having achieved this aim, I shall then conclude by describing the approach which I believe listed corporations should adopt in order to practically end the debate and the required implementation.

The ability to conclude the debate and appropriately react will enable the rewards of effective corporate governance to ensue; benefitting the corporation itself through the increased ability to attract investors by enhancing investor confidence, increasing shareholder return, influencing economic growth and societal welfare through minimizing the risk of corporate malpractice, culminating in the enhancement of the international competitive corporate arena, benefitting economical welfare. My thesis will be of great contribution to the literature because not only does a major review of the practical and theoretical implications of duality currently lack, but so does any determination of how the debate can progress and any potential prescription for alternative resolution.

As will be discussed in greater detail throughout my thesis, I essentially advocate that the debate of duality has progressed in an inconclusive manner, because focus has wrongly been placed on an attempt to determine the optimal corporate leadership structure. From the outset of my thesis I argue that this approach is inappropriate due to the inherently diverse nature of every corporate entity and their operating environments, and thus finding the optimal leadership structure is arguably an impossible task to attempt to conclude. My search of bringing finality to the debate instead suggests taking a process orientated approach towards boards informational deficiencies, in order to overcome ineffective CEO oversight and unnecessary CEO reliance so board members can effectively fulfill their responsibilities. Both proponents and opponents of the

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30 As Sharpe has insisted in “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
duality debate premiss their contentions upon this underlying information issue, and upon acknowledging that the lack of boards informational autonomy is unable to be solved by mere structural reform it is clear to see why the duality debate has persisted for so long. Responding to the same, and also the issues surrounding the debate of duality, I take a process oriented approach in which the board can become more effective monitors and more efficiently fulfill their duties, by increasing their access to information gathering channels that are not controlled by the CEO.\footnote{Yang, Zhao, “CEO Duality And Firm Performance: Evidence From An Exogenous Shock To The Competitive Environment” (2013) Online: SSRN <http://ssrn.com/abstract=2177403>}

In making a specific proposal which compliments modern day boards and technological developments, I believe board oversight and decision making is enhanced, leading to a more independent board of directors who are better equipped to detect managerial corruption and incompetence through access to enhanced information, which will lessen the risk of corporate disasters through enhanced leader oversight, and enable numerous practical benefits which comes with effective corporate governance to ensue.

2 Duality In The International Arena

The misalignment of regulation towards board leadership structure has caused inconsistencies and disparities in international leadership practice\footnote{Proxy Monitor, “Union Funds Pushing Companies to Separate Chairman and CEO Role” (2013) Online: <http://www.proxymonitor.org/forms/2013Finding1.aspx>} despite international standards having been developed in an attempt to bring consistency to practice\footnote{OECD, “OECD Principles Of Corporate Governance” (2004)} and despite the internationalization of modern day corporate entities.\footnote{Tripathi, Shivnath, “Comparative Board Structures Under Corporate Governance Framework” (2013) Online: SSRN <http://ssrn.com/abstract=2282924>} While some jurisdictions legally mandate the separation of the role of Chairman and CEO through the requirement of a unitary board structure as in Germany and the Netherlands, other counties have a less restrictive legal and regulatory landscape and allow corporations to determine and implement the leadership structure which they believe is most appropriate depending on their particular circumstances. As the two tier board structure institutionalizes the clear distinction and segregation between the supervisory and monitoring function of the board and its managerial function, my thesis will progress by solely considering
the unitary board structure, the catalyst of the debate of duality, in order to review how regulation and practice has developed in the past, to determine the appropriate action for the future.

2.1 The Regulation And Prevalence Of Duality

While many corporate officers have typically argued that unity of command is a necessary survival strategy to allow major corporations to respond to the fast changing environments they are trying to survive in, many in the corporate governance community argue that duality merely allows officers to enjoy unchecked power which leads to nefarious ends, and a non-dual structure is necessary to provide enhanced oversight to avoid such problems.\(^ {35}\) Such a dichotomous debate has developed through inertia for more than two decades, despite the landscape of board leadership having changed during this time. Not only is greater emphasis now placed on regulation with the aim of bringing greater transparency corporate practice, but investor influence has increasingly played an inherently important role in dictating and influencing board leadership structure which has had the effect of diminishing the practice of duality—with listed corporations who have separated the positions having doubled in the last few years.\(^ {36}\) I will now consider aspects of international regulation in Canada, England and the U.S., in order to consider how different jurisdictions have approached the matter of duality in their legal and cultural business environments.

2.1.1 Canada

In the early 1990s, the Toronto Stock Exchange (TSX) commissioned the Dey Report\(^ {37}\) which investigated Canadian governance practices in the wake of several large corporate failures—heralding a new era of increased attention to the responsibility of Canadian boards as stewards of shareholder value.\(^ {38}\) As a result of the report, the TSX adopted 14 non-mandatory best practices and required Canadian listed corporations to annually disclose their practices, explaining any

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\(^ {35}\) Krause, ‘CEO-Board Separation: Promises And Pitfalls” (2013) Online: Conference Board Governance Center <http://tcbblogs.org/governance/2013/02/06/ceo-board-chair-separation-promises-and-pitfalls/>

\(^ {36}\) Krause, ‘CEO-Board Separation: Promises And Pitfalls” (2013) Online: Conference Board Governance Center <http://tcbblogs.org/governance/2013/02/06/ceo-board-chair-separation-promises-and-pitfalls/>


\(^ {38}\) The Institute Of Corporate Directors, “Five Years To The Dey” (1999) Report On Corporate Governance
differences between their practice and such principles. Majorly influencing Canadian public corporations leadership structure, the TSX guidelines require the appointment of a non-executive Chair, or a lead director if duality is practiced, as emphasised in National Instrument 58-101 in reference to the guidelines set out in National Policy 58-201. The Canadian regulatory approach thus appears intolerant to duality; seemingly rigid and prescriptive in requiring corporations to either separate the roles of Chair and CEO, or introduce an additional officer to the board as an increased oversight mechanism. This has led to duality becoming increasingly uncommon in TSX listed corporations, with a majority of 55% of the TSX 60 having independent board chairs. However, it is not only the regulatory approach in Canada which attempts to influence corporate leadership practice, but as Canadian corporations have a large percentage of controlling shareholders this has led to investor activism playing a significant role in effecting structural change and influencing corporate leadership. Investors have typically followed the Canadian Coalition for Good Governance’s influential approach towards advocating against duality. Allowing the market to play a major role in determining the adequacy of corporations chosen practice, with investors being the influential adjudicator in assessing and prescribing governance practices and structures, has been considered a necessity upon reflection of the unique regulatory system in Canada whereby regulation is carried out at a provincial and territorial level making uniformity difficult to achieve, and also in acknowledging the relatively low market capitalization of many listed Canadian corporations which arguably make strict rules a significant and administrative burden.

2.1.2 England


40 Ontario Securities Commission, “Corporate Governance Guidelines” National Policy 58-201

41 Deloitte, “Board Leadership: A Global Perspective” (2011) Center For Corporate Governance

42 Jewett, “Corporate Governance Regulation In Canada” Torys LLP


46 Jewett, “Corporate Governance Regulation In Canada” Torys LLP
Similarly, England’s leadership regulation also presumes that duality impairs good corporate governance, which too has received investor endorsement. England is considered to have the highest and most influential standards of corporate governance in the world. Following the Cadbury Report the Corporate Governance Code was produced which has been instrumental in effecting best boardroom practice in the listed sector. The Code remains the main regulatory tool, with its principals having been adopted by the London Stock Exchange (LSE) as listing requirements. The Code consists of principles which listed corporations are to follow on a comply or explain basis; applying the main principles and reporting how they have done so, and justifying and explaining the failure to follow a provision. This gives corporations greater flexibility than in Canada to determine the leaders and officers of the board, especially when considering generalized, non-detailed explanations for non-compliance have continuously warranted departure from the Code in England. However the market also plays an influential role in assessing the effectiveness of the practices as in Canada, again restricting corporations flexibility in their determination of leadership practices.

The Code prescribes for there to be “no one individual having unfettered powers of decision”, insisting that “the roles of Chairman and CEO are not exercised by the same individual” and for the division of responsibilities to be clearly established, set out in writing and agreed by the board. Although the regulatory approach in the UK enables corporations to have a dual structure without the pre-determined oversight mechanism of a lead director having to be implemented as does the more invasive Canadian approach, the principles also appear to insist that duality has the potential to blur lines of authority and impair good corporate governance. Such a regulatory insistence, along with the prestige of the code has generally led to impressive

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levels of compliance\textsuperscript{53} but also formed the basis of the misguided belief that duality is bad corporate practice, leading to investor pressure upon boards to separate the top leadership roles,\textsuperscript{54} which has now become common practice for nearly all major UK corporations.\textsuperscript{55} This is despite non-duality having made no discernible difference to the quality of decision making at the Northern Rock or the Royal Bank of Scotland, who had to be bailed out by the UK Government despite the Parliamentary Commission on Banking Standards finding that the Chairman shared the responsibility for “colossal failure” with the former CEOs, which I believe supports my belief that there is an underlying contention which such structural focus overseeing.

\textbf{2.1.3 The U.S.}

Although in the U.S. there is a legal approach to the regulation of corporate governance, laying down formal, detailed corporate governance provisions in the Sarbanes-Oxley Act (SOX),\textsuperscript{56} the Act does not address CEO duality, despite the SOX being introduced in the aftermath of high-profile corporate scandals, and despite duality having being blamed for being a significant instigator.\textsuperscript{57} However the passage of SOX fostered a greater focus on governance issues beyond its specific provisions--\textsuperscript{58} which resultantly effected the practice of duality.\textsuperscript{59} This is shown by statistics whereby 80\% of S&P 500 corporations practiced a dual leadership structure in 1992 compared to only 43\% in 2007,\textsuperscript{60} and 92\% of those practising duality currently having established a lead or presiding director role.\textsuperscript{61}

\begin{footnotesize}
\textsuperscript{53} The Financial Reporting Council, The UK Corporate Governance Code (2012)
\textsuperscript{54} The Financial Reporting Council, The UK Corporate Governance Code (2012)
\textsuperscript{55} Deloitte, “Board Leadership: A Global Perspective” (2011) Center For Corporate Governance
\textsuperscript{56} The Sarbanes-Oxley Act 2002
\textsuperscript{57} Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65
\textsuperscript{59} Cullinan, “CEO/Chair Duality In The Sarbanes Oxley Era: Board Independence Versus Unity Of Commands” (2012) 16 Research on Professional Responsibility and Ethics in Accounting 167–183
\textsuperscript{60} Risk Metrics Group: Standard & Poors 500 (2009)
\textsuperscript{61} Deloitte, “Board Leadership: A Global Perspective” (2011) Center For Corporate Governance
\end{footnotesize}
Although duality still remains the most popular and prevalent leadership structure in the U.S. when compared to other countries, with Wells Fargo having recently survived a shareholder attempt to separate the positions, it is clear that the U.S. regulatory environment is gradually increasing their support of non-duality. For example; U.S. corporations that received assistance under the 2008 Troubled Asset Relief Program were required to separate the CEO and Chairman titles. The Securities and Exchange Commission (SEC) recently ruled that boards in listed corporations are required to disclose their leadership structure and explain the rationale and appropriateness of their structure in their proxy statements, and detail the roles and responsibilities of the CEO and/or Chairman, as adopted by the New York Stock Exchange (NYSE). The potential liability attached to failing to file such information with the SEC, along with the consequences of failing to abide by the NYSE rules makes compliance of inherent importance. Current and former commissioners of the SEC have long spoken in favor of separating the positions as a means of reducing the power of the CEO with Donaldson previously stating separation is necessary to avoid concentrating "too much executive authority in one individual", and Legislators have long been pushing for the separation of the positions in Congress. This has led to growing criticism of the practice of duality from shareholder activists, which has been the main influence impacting and alternating leadership structure in listed corporations due to their preference towards role separation, seen in the increased shareholder proposals demanding the split of the Chair and CEO positions faced by the likes of JPMorgan

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67 Directors And Boards, “The Great Divide” (2009) Board Leadership


69 The Shareholder Bill of Rights Act 2009 (Not enacted), The Shareholder Empowerment Act of 2009 (Not enacted)

70 Kakabadse, Barratt, “Chairman And CEO: That Sacred And Secret Relationship” (2006) 25(2) Journal of Management Development 150
Chase and Goldman Sachs Group Inc. On the state front, direct action has even been taken in North Dakota in 2007 whereby the legislature added a corporate governance chapter to the state’s business corporation statute with one of the provisions generally prohibiting duality, in order “to strengthen corporate democracy and improve the performance of publicly traded corporations”.71

2.2 International Practice

I do generally believe that the current regulatory practice in the aforementioned jurisdictions is effective; I do believe that each approach does enable greater transparency of process-although some argue that shareholders can only garner very little added insight from annual proxy documents which restricts investors monitoring abilities-72 while enabling corporations differing extents of flexibility in determining best practice, which is superior to inflexible archaic legal rules as such enables fast and efficient amendment in order to develop along with market need and enables investor participation in determining the adequacy of governance standards imposed. This is important as it enables the underlying premiss of the corporation to be endorsed, by assisting with the alignment of the interests of those in which the corporation is meant to act, and also enables corporations to function within their own business environments. Adoption of the regulatory principles and prescriptions through stock exchange listing requirements also enables an effective method of requiring implementation and compliance. However, one finds it difficult to comprehend why there is an underlying international regulatory hostility towards duality, which can also be seen in the OECD international non-binding standards of good practice,73 and why investors are increasingly demanding the reconfiguration of board leadership structure to adopt non-duality which they perceive to be an ideal governance structure.74 Demands have typically come in the form of shareholder proposals to split the positions with 35 major corporations having received shareholder proposals in favor of separating the positions in the


72 Directors And Boards, “The Great Divide” (2009) Board Leadership


2012 proxy season. Although they are non-binding on boards of directors, the shareholder resolutions have been successful in achieving a split of the positions on an international level, as at the Bank of America in 2009, and in 2011 such also attributed to eighteen S&P 500 corporations having adopted formal policies to separate the positions\textsuperscript{75} due to boards competing to impress various industry groups who also support splitting the leadership positions-such include the Council of Institutional Investors, the Millstein Center for Corporate Governance and Performance and also the National Association of Corporate Directors. However, such investor insistence towards splitting the Chair and CEO positions fails to account for the practical considerations which are necessary to be made when demanding non-duality be practiced in all listed corporations; such as whether separation will be temporary and whether corporations will decide to provide shareholders with a voice in the matter. There also lacks regard for how corporations will effect separation, whether this be by apprentice, demotion or departure separations. Although demotion separations, in which the CEO remains chief executive, but an independent director is appointed as the new Chairperson, are the least common form of separation, it is typically what corporate governance activists are demanding-which shows how independent monitoring is really what investors are believing is required on boards. Not only in consideration of the issues raised below with regards to the independence of non-executive directors, but when considering demotion separations have a sizable impact on future firm performance in corporations who are performing well which can cause stock to go in to a tailspin\textsuperscript{76} it leads one to question the appropriateness of the influence investors have upon determining leadership structure, especially when they are acting upon outside knowledge,\textsuperscript{77} and question why corporations are pacifying investor demand irrespective of firm performance.\textsuperscript{78} Investor influence means fluctuating practice is possible. which is not beneficial for corporate strategic planning. For instance, despite the investor led mandate against duality, investor insistence towards splitting the positions of Chair and CEO were rejected by 65% of voting

\textsuperscript{75} Spencer Stuart, “Spencer Stuarts US Board Index” (2012) First Quarter 21

\textsuperscript{76} Krause, ‘CEO-Board Separation: Promises And Pitfalls” (2013) Online: Conference Board Governance Center <http://tcbblogs.org/governance/2013/02/06/ceo-board-chair-separation-promises-and-pitfalls/>

\textsuperscript{77} Directors And Boards, “The Great Divide” (2009) Board Leadership

\textsuperscript{78} Directors And Boards, “The Great Divide” (2009) Board Leadership
shareholders this year. With corporate leadership structure in listed corporations arguably being led by investor perception and personal opinion at different times, this makes structure ripe for fluctuation—as evidenced at Walt Disney where the positions were separated in 2005, before dual leadership was restored last year and in Whole Foods Market in 2009, after years of easily resisting shareholder demand, CEO Mackey finally admitted defeat and stepped down as Chair. However other leaders do continue to vehemently resist investor pressure, maintaining that there is no benefit gained in separating the positions, counterining stakeholder demands releasing statements claiming duality affords them indispensable unity of command and does not effect oversight and independence—the position taken by the board of Chevron Corporation last year. However, I believe that such extraordinary influence against duality is making it progressively harder for the majority of listed corporations to disclose the truth to stakeholders, if the truth is that duality is actually the preferential leadership structure for their individual circumstances. Preserving the belief that the aim of the debate of duality is to enhance corporate governance practice, it is thus difficult to conclude that this is currently being attained. The debate therefore needs to be concluded in order to ensure the practice which is being demanded of listed corporations on an international basis is the most appropriate and effective practice for the individual corporation.

With it now being common practice that duality is automatically considered to be an inappropriate leadership structure by investors despite the debate remaining inconclusive at present, I argue that this must be due to a potential misunderstanding of the nature of duality and misconceived assumptions about the practice. There is a reliance on the assumption that an


81 Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65


84 Deloitte, “Board Leadership: A Global Perspective” (2011) Center For Corporate Governance

independent, non-executive Chair will create an independent board which will lead to better
detection of managerial corruption and incompetence\textsuperscript{86} through enhanced investor oversight,
which will increase the boards ability to access information about the CEO and management’s
performance without interference, resultantly enhancing corporate performance. This potential
misunderstanding has become the prevailing understanding of non-duality, even adopted by
corporations despite their natural opposition,\textsuperscript{87} in an attempt to restore investor trust and gain a
good reputation\textsuperscript{88} after several high profile cases where powerful dual CEOs were found to abuse
their tremendous power.\textsuperscript{89} This is generally in the knowledge that investors are now more
prepared than ever to pay a premium for what is considered good corporate governance, and in
an attempt to reduce the potential of influential investors such as Ontario Teachers and California
Public Employees Retirement from submitting shareholder proposals to urge non-duality, and to
lessen the risk of hostile takeovers due to perceived ineffective performance.\textsuperscript{90} This is despite
proponents of duality believing duality facilitates a better informed and more collegial decision
making process through greater co-operation between directors and executives—providing a more
effective information sharing system, enabling the board to independently monitor, oversee and
determine governance matters. In an attempt to settle the contention of leadership structure,
different international practices have been adopted by corporations on an international basis—
although they too have not been able to bring finality to the debate due to their structural
impositions. As required in Canada, other jurisdictions where corporations practice duality
attempt to curtail investor disgust by introducing a lead director to the board to enhance
oversight arguably destroyed by duality—as did Goldman Sachs.\textsuperscript{91} As a result of stakeholder
pressure surrounding duality having reached tipping point, this has caused the practice to grow
from non-existence to near-saturation in just over 10 years. Lead directors are usually

\textsuperscript{86} Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
\textsuperscript{87} Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65
\textsuperscript{88} Siladi, The Role Of Non-Executive Directors In Corporate Governance: An Evaluation (Faculty of Business and
Enterprise, Swinburne University of Technology 2006)
\textsuperscript{89} Moscu, “Does CEO Duality Really Affect Corporate Performance” (2013) 2 International Journal Of Academic
Research In Economics And Management Services 1
\textsuperscript{90} Krause, Semedeni, CEO-Coard Chair Separation: If It Aint Broke, Dont fix it (Conference Board Director Notes
2013)
\textsuperscript{91} Lipton “On The Leading Edge: The Lead Director” (1993) 71 Harvard Business Review 79-80
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le for chairing executive sessions, serving as a liaison between executives and the board and reviewing information sent to the board. However, a survey of the DOW 30 found that the majority of corporations do not extend the powers of the lead director to aiding information flow by approving information sent to the board, or leading the CEO’s evaluation-92 which are the responsibilities I would consider necessary for the lead director to carry out in order to be an effective oversight mechanism to overcome the problems raised by duality. Lead directors thus seemingly take on a consultative rather than authoritative role and this has led to empirical findings suggesting they do not to enhance corporate performance93 and are unable to counterbalance a powerful dual officer.94 I thus believe corporations are using lead directors to quell over investor anger of holding a dual leadership structure—merely a symbolic gesture to signal independent oversight without creating a significant structural benefit, in an attempt to make investors and society accepting of duality. With investors seemingly accepting duality in the presence of a lead director, it further supports my argument that duality itself cannot be the actual issue in the debate of duality, but there must be an underlying contention of board practice which is in fact leading to general misconceptions and misunderstandings associated with duality which attribute the incorrect belief to many that duality is to blame for board problems.

International practice has also seen increased use of Chairman emeritus designations, with twenty S&P 500 corporations being found to have such last year. This position is usually filled by a former Chairman who in certain circumstances, if not an executive, may be given access to important information one can then assess and advise the corporation on. Appointing a Chairman emeritus may thus enable less reliance on CEO’s and increase the boards access to information to allow enhanced CEO monitoring and lessen the contention towards duality.95 However, I submit such benefits are minimal due to the designation being merely of prestigious effect, with restricted responsibilities and abilities being determined by the board itself, which potentially lack definition and therefore increase misunderstanding of officer responsibilities—adding to the difficulties raised in the duality debate. This has been recognized on an international scale, and

92 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
93 Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65
95 Deloitte, “Board Leadership: A Global Perspective” (2011) Center For Corporate Governance
led to the office of corporate ombudsman having been specifically created to act as an independent, inside information gatherer for the board, able to access wider sources of information than typically available to the board, which supports one in believing it is informational deficiency which is leading the debate of duality, due to mechanisms trying to overcome duality focussing on improved monitoring and oversight through increased access to information. Such enhanced knowledge being directly relayed to the board reduces their reliance on the CEO and increases CEO oversight. However, the position itself faces similar complaints as aimed at the CEO, such as the ombudsman having the power of tainting the information, and tactically determining the information disclosed to the board. However I do believe such an appointment evidences how corporations are aware of the boards reliance on CEO’s and their informational disadvantage, and see it as a troubling underlying issue caught up in the debate of duality.

I submit that the ease of oscillation of the most important corporate governance issue and one of the most prodigious practical changes to make to a corporation through investor influence, is unsatisfactory, because such action is based on inconclusive knowledge about the practice of duality. I advocate that corporations, being the essential entities to society that they are, should not develop in an uncertain world-with corporate health, strategic matters and international competition and the increasing pressure to deliver performance all benefitting from greater certainty and future stability. This therefore furthers the need to bring finality to the debate of duality, to empower all players in the corporate arena with greater knowledge and information, so any demands towards altering corporate leadership structure is with the view to benefit corporate specific circumstances, rather than a general assumption being implemented on an international basis due a misunderstandings and inertia surrounding the debate. With the international practice seeing the implementation of additional officers on the board, based on the belief that there is an informational deficit of the board, leading to ineffective CEO monitoring and increased CEO reliance and, it is necessary to consider whether such concerns are evident in the contentions surrounding the debate, to see whether here lies the potential of ending the debate.
3  The Dichotomous Debate

In the words of Finkelstein and Hambrick duality remains “the most contentious issue in public debates about boards of directors”, continuing to rage in academic and practitioner circles, with finality failing to be found. There are many different facets which contribute to the debate on duality and its inability to end; from the extensive disagreements surrounding the practicalities of leadership structure, to the dichotomous theoretical approaches underpinning and influencing the practice, to the inconclusive empirical attempts at justifying the dichotomous theory. It is necessary to consider the same in order to understand how the debate of duality has developed in light of the contradictory environment it has progressed in for over two decades, in order to decipher if an end is in sight.

3.1 The Reality Of Duality

There are many diverse views, opinions and contentions surrounding the debate which have been infuriated and often fabricated by international mass media, activist shareholders and defiant directors, culminating in a twenty year dispute well-known for its inability to cease. However, in my attempt to end the debate, I believe it is necessary to consider the key contentions to see if the perceived underlying issue I have discovered of boards informational deficiency leading to CEO reliance and ineffective monitoring, can be uncovered from practical reality, in order to consider whether finality can somehow be encouraged in the midst of this perplexing and disconcerting state of affairs.

3.1.1 Centralization Of Authority

The most apparent effect of duality is that the two top corporate positions are being held by one commander as opposed to a separate CEO and non-executive Chair. Anderson and Anthony (1986) have long maintained that the combined role provides a single focal point for corporate leadership which projects a clear sense of direction in the corporation. Such confidence comes

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97 Deloitte, “Swimming In Words-Surveying Narrative Reporting In Annual Reports” (2010)

from the conviction that dual CEO’s will use their intimate business knowledge to lead the corporation more efficiently because they are more able to forcibly guide the corporation with the appropriate strategy as they behold more power to be reactive to situations in the midst of the dynamic, competitive and fast changing environments which listed corporations typically find themselves in due to there being no separate Chair to be countermanded by. This does in fact gives investors and society alike greater confidence in the corporation which has been consistently called for following the global financial crisis and corporate misdemeanors,\textsuperscript{99} due to it being clear who is essentially in charge and responsible for the corporation,\textsuperscript{100} and the leaders knowledgeability lessening the possibility of potential detriment to organizational operations.\textsuperscript{101} The unambiguous sole leader is thus attributed with enabling a multitude of practical benefits, such as decreasing potential rivalry and conflict between two leaders,\textsuperscript{102} which sends a reassuring message to shareholders and potential investors. However, Zelleke\textsuperscript{103} previously found that rivalry and conflict between the officers is in fact unrealistic, as Chairs are generally respected by CEO’s and a productive relationship between management and the board arguably comes as standard. Yet I submit that this does not support non-duality, because non-executive Chairs are likely to have hampered informational and industry knowledge and competency reluctance due to their independence, which alongside their general inability to become well informed,\textsuperscript{104} may cause separate Chairs extreme difficulty in meaningfully shaping board discussion. This leads to difficulties in establishing credibility and legitimacy with the other directors\textsuperscript{105} and thus impairs their ability to obtain information necessary to effectively monitor the CEO. I thus believe separate Chairs at present are merely acting as meeting leaders to walk

\textsuperscript{99} Kakabadse, Barratt, “Chairman And CEO: That Sacred And Secret Relationship” (2006) 25(2) Journal of Management Development 150

\textsuperscript{100} Vlahu, “Corporate Governance of Banks” (2013) DNB Working Paper 386

\textsuperscript{101} Callaghan, “The Relationship Between CEO Duality And Subsequent Corporate Financial Performance” (2005)

\textsuperscript{102} Wallalage, “Does CEO Duality Really Matter? Evidence From An Emerging Market” (2011) 8 Corporate Ownership And Control 4


the board through agenda rather than equip the board with the knowledge and information they require to fulfill their duty to monitor management effectively. This leads the Chair to rely on the CEO and provide information which is able to be distorted on two levels before reaching the board; by the powerful CEO and the ineffectively placed Chair, leading to the board being unable to effectively monitor the leaders, and make well informed decisions on corporate strategy.

3.1.2 Oversight

What is difficult to comprehend is how the same person responsible for the firm's performance is also the person evaluating their efficiency, and how dual officers can properly execute their fundamental governance role? With the practice of duality being said to enhance managerial dominance because the officer will allegedly be more aligned with management than with shareholders, and with joint responsibility arguably eroding corporate checks and balances, oversight, and effective monitoring—dual officers are believed to enjoy unchecked powers which could potentially be used toward nefarious ends; such as pursuing their own self interests to set their own board agenda and influence board decisions by withholding and misusing the information available. With the reliance boards and corporations place on the CEO for gathering, assessing and acting upon information, and acting as the informer between management and the board, their ability to abuse their powerful position as “dictator” and throw “checks and balances to the wind” is inherently controversial. I believe such possibilities have led shareholder activists to demand separation on an international basis because of the possible harsh repercussions. I believe such potential repercussions of duality destroy the basic principle of the corporate entity by undermining the board and the management's responsibilities to act in the interests of the corporation, which reduces the ability to trust and rely on the leader and therefore

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106 Moscu, “Does CEO Duality Really Affect Corporate Performance” (2013) 2 International Journal Of Academic Research In Economics And Management Services 1

107 Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65

108 Krause, Semedeni, CEO-Coard Chair Separation: If It Aint Broke, Dont fix it (Conference Board Director Notes 2013)

109 Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65

110 Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65
negatively effects how the corporation is perceived as a potential investment opportunity.\textsuperscript{111} This leads me to question why the CEO is given such great power through unrestricted, informational access when there is a board of directors who are there to monitor management and the corporation, who would be greatly assisted if they were able to access the information the leaders are acting and responding too, rather than being restricted to relying on the CEO, and rather than implementing lead directors, Chairman emeritus and corporate ombudsman which I have argued as being generally ineffective. I even believe the Chairmans appointment to monitor the CEO is effected by ones independence and own bias and abilities, which is why I believe the debate of duality rages despite the practical investor influenced mandate against the practice of duality, because there is this underlying contention of board informational deficiency present in both leadership structures which leads to the boards inability to effectively monitor the CEO. It would therefore appear that enhancing the boards informational access and lessening their reliance on the CEO to disclose the often tainted, biased information, would enable and enhanced oversight in both leadership structures, and assist in aligning the CEO’s interests with that of the shareholders.\textsuperscript{112} I believe enabling the board to react and respond to information they are able to access themselves, rather than relying on what they are offered will enhance CEO oversight which is an issue raised in both dual and non-dual leadership structures.

3.1.3 Independence

The arguments directed at the practice of duality make it easy to assert, and even easier to assume that an independent non-executive Chair will facilitate board independence, by leading to the better detection of managerial corruption and incompetence, enabling enhanced corporate performance by lessening the risk of corporate disasters and being more able to effectively oversee the CEO and ensure the necessary information is provided to the board to enable the board to effectively and efficiently fulfill its functions. This reflects the concept behind international regulation which influences corporations to avoid duality, which investors have


adopted the role of gate-keeper of.\textsuperscript{113} However, I argue that the insinuation that a non-executive Chair enables independence is incorrect. This is because in reality, listed corporations typically appoint Chairs who are former CEO’s, otherwise related to the corporations current management, or have substantial equity in the firm. This has been evidenced in statistics, whereby Coles and Hesterley (2000) found that only 16\% of the U.S. corporations have a truly independent chair, with the figure in the UK standing at only 25\%\textsuperscript{114} despite non-duality being the prevalent practice. Therefore, Chairs monitoring ability of the CEO is in practice undermined. However, I submit that even if there was a truly independent Chairman, this too would be an ineffective oversight mechanism of the CEO. This is because independent directors have less knowledge and information about the corporation than their inside director counterparts, which results in outside directors and resultanty their board, relying almost exclusively on the CEO for information about the corporation which may be tainted, and thus effects their oversight of the CEO.\textsuperscript{115} It thus appears that the contention against dual leadership structure is based on misconceptions and incorrect assumptions, which is proving not to be providing the resolutions they were hoped to, which leads one to question not only the informational power beholden to the CEO inherent in both leadership structures, but leads one to question the structural emphasis being advocated for in the debate of duality which is unable to overcome this problem, which appears to be the common, underlying feature of the contentions raised in the duality debate.

3.1.4 Roles And Responsibilities

Concern is often focused on dual officers due to the inability to define the officers roles and responsibilities. This is because one questions how an office can be effective in practice if it is unable to be defined. It is typically assumed that a dual officer may find it difficult to recognize, separate and undertake the responsibilities required of the overlapping roles, which will lead to ineffective practice due to the dual officer gaining a further increase in power, which leads to the

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\textsuperscript{113} Coles, Hesterly, “Examine the CEO And Chairman Duality Issue From The CEO Independence And Board Composition Perspective” (2000)
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\textsuperscript{115} Owen, “Evolution Or Revolution? Changes In Britain's Boards Of Directors From 1960 To 2010” (2011) Spencer Stuart
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boards total reliance upon the officer to ensure effective corporate governance and performance. This leads to the reliance upon the CEO to disclosed the information necessary for the board to be involved in the decision making process and fulfill their monitoring duties. In comparison, bifurcating the roles may assist in defining and separating the roles and responsibilities of the offices, enabling independence and autonomy between the board and management to be clear which increases societal trust and investor confidence, enabling greater monitoring of CEO practice and more ability for the board to be aware of informational sources through enhanced oversight and monitoring of the CEO. This underlies regulation as previously discussed, which requires disclosure of corporate leadership structure, the responsibilities assumed and how the officer is to commit to such responsibilities. As mandated by a recent European Commission green paper\textsuperscript{116} the functions and duties of the Chairperson and the CEO are to be clearly divided,\textsuperscript{117} with the Higgs Report (2003)\textsuperscript{118} recommending that the responsibilities should be set in writing and agreed by the board. However this does not make non-dual structures faultless, as not only does this give room for corporations to take an institutional theory approach to regulation, and for effects of non-compliance to entail, but Zelleke’s comparative study\textsuperscript{119} actually found that there was no clear and defined job description for the separate Chair position either, which causes separate CEOs and Chairs to be distracted by “struggles over power, territory and accountability”,\textsuperscript{120} and may lead to a disengaged Chair who is fearful of speaking up, or an uninterested CEO who does not undertake ones responsibilities seriously, which subsequently effects the boards ability to fulfill their oversight role.

Such blurred lines of responsibility also has the potential hazard of frustrating the issue of CEO succession. In some cases, a dual officer may be able to retire as CEO, but keep the office of

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\textsuperscript{116} European Commission, “The EU Corporate Governance Framework” (2011) Green Paper
\textsuperscript{117} Siladi, The Role Of Non-Executive Directors In Corporate Governance: An Evaluation (Faculty of Business and Enterprise, Swinburne University of Technology 2006)
\textsuperscript{118} Callaghan, “The Relationship Between CEO Duality And Subsequent Corporate Financial Performance” (2005)
Chairman. Although this ends the contentious dual position which appeases proponents of duality somewhat, it nonetheless puts the new CEO in a difficult position. The Chairman will be in a position to question all changes put in place by a new CEO in an attempt to exert ones power and due to being unable to restrain oneself due to unknown or at least unclear lines of responsibility. The board may take sides with the Chairman whom they trust and have a relationship and history with and the conflict of responsibilities would make it difficult for the new CEO to implement any changes due to power and influence likely remaining with the former CEO. Such confusion will effect the boards ability to fulfill their responsibilities due to it not being known who to place their reliance upon and who to monitor for what reasons. The CEO may be less likely to communicate with the board and be less engaging-restricting the boards informational access and ability to monitor the CEO who may be more inclined to begin acting in their own self interest. Such problems are also enhanced when considering the pressures and breadth of responsibility borne by each individual position of CEO and Chairman in major, listed corporations, and with the likes of Krause and Semandeni (2013) persistently arguing that the CEO itself has even grown beyond the capacity of a single person,121 and the Cadbury Committee122 advocating that the position of CEO is a “full-time post itself and the Chairman is a part-time position”.123 This may enable one to easily assert that it is actually unreasonable to expect one person to ably fulfill both roles efficiently and effectively, with dual CEO’s potentially restricted in their ability to gather, advise and consult on the information they work with due to potential time restraints, thus increasing agency costs.124 Although when considering corporate reality, one may argue that a dual officer does infact have the requisite time to devote to board matters when considering the number of times boards meet is trending downward, with the average board of the Fortune 1000 meeting in person eight times annually, and with a scant 7% holding monthly meetings as compared to 25% twenty years earlier.125 I also

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assert that corporations with non-dual leadership structures with non-executive Chairman who work restricted hours, are arguably restricted in their ability to monitor the CEO sufficiently and ensure effective corporate practices and strategic decision making, due to their lack of continual information flow, and their lack of continued insight into corporate activity, which is also a problem which effects non-executive directors of the board—unlike the CEO who has access to unrestricted information on demand away from the boardroom who does not have to play catchup with developments in the corporation unlike the rest of the board. Although I maintain that the officers themselves are best equipped to determine whether they are personally able to fulfill their roles efficiently and carry out their duties effectively, I conclude that such practical considerations equally effect both dual and non-dual leadership structures, effecting the abilities of board members from fulfilling their roles due to the impacts of such considerations upon monitoring processes, increased CEO reliance and the ability to access necessary information in a proactive manner.

3.1.5 Personalities, Behaviors And Relationships

When considering what is required of a dual CEO/Chair, it is clear that such an officer has to have legitimacy with the director group based on industry knowledge, attention to boardroom process and inherent leadership skills—all of which do not necessarily come as a guarantee with a separate Chairman—unless the non-executive Chair possesses a high degree of industry knowledge through having had a long, successful career in the same industry.\textsuperscript{126} The separate Chair thus has the added pressure of being required to develop a strong and trusting relationship with the CEO, whether or not the officer is willing, in order for the board and stakeholders to be content with the officers performance and trusting in their ability to attain the necessary information and provide the requisite oversight. This leads me to believe that the effectiveness of board leadership is inherently dependent on a series of relational and individual attributes and

behaviors, with research even attributing the behaviors and capabilities of officers as being the most critical factor in affecting board performance.\textsuperscript{127}

Whereas non-dual CEOs have been said to leave corporations at a younger age and work for corporations for a shorter period, due to having a little sense of belonging-increasing the risk of them acting in their own self interests-\textsuperscript{128} the responsibility which comes with holding a dual office is typically considered to influence dual officers to work hard-motivated by an enhanced sense of responsibility, greater management power and reputation which enhances corporate practice-due to their increased sense of belonging with the corporation. However, this has led to opponents of duality advocating that this leads to CEO entrenchment-\textsuperscript{129} not merely due to pursuit of personal motives but because a dual leader and the board in general is believed to be more inclined to lack the motivation and incentive to objectively evaluate and discipline in dual structures, which increases the risk of entrenching the CEO/Chair in both positions. However I contend that the markets remain highly reactive to potential entrenchment which lessens such a risk. I also believe that the dual officers powerful position with regards to knowledge, understanding, and greater access to information which is beneficial for corporate performance and improving and maintaining the quality of board decision making upon disclosure to the board. Such is enabled because duality facilitating a better informed and more collegial decision making process through greater co-operation between board directors and corporate executives-providing a more effective information sharing system, enabling the board to independently monitor, oversee and determine governance matters. However opponents of duality maintain that collegiality is only present until a point of challenge in board decision or corporate operation. This is because in instances of dispute the board may distance themselves from the decision making and monitoring process due to wanting to avoid conflict with such a powerful officer who they believe is better positioned informationally to make important decisions-leading to board disengagement due to the belief the officers contributions are not valued, important or of any affect. A powerful dual leader may be of even greater effect upon managing directors on the


\textsuperscript{128} Wharton “The Cost of Entrenchment: Why CEOs Are Rarely Fired” (2011)

\textsuperscript{129} Martin, “Lone Insider Boards: Improved Monitoring Or A Recipe For Disaster?” (2008)
board, who may choose to disengage as they may not wish to be involved in monitoring and evaluating the CEO/Chair due to loyalty to the officer, or due to the constant need or wish to impress the CEO-apparently giving dual officers free reign to pursue their own self interests. Although a dual officer is arguably restricted from acting in ones self interest and prevented from dominating the board, due to international regulations which focus upon board structure, insisting upon a properly functioning, well appointed, diverse and multi-membered board which has effective processes in place enabling effective monitoring and control, regardless of the leadership structure in place, I assert that such regulatory and investor influence upon board appointments and overall structure is ineffective. This is because structural requirements do not acknowledge the likelihood that CEO duality begets self-interested behavior at shareholders expense which almost entirely depends on who the dual officer is and their values, beliefs, priorities, skill set and experiences, and whether they are of the personal character to pursue, relentlessly and without exception, ones own self interest, regardless of the often harmful consequences it might cause to others. This means that general assumptions towards board structure, but more importantly duality and non-duality, are inappropriate, making the structural pursuit to find the optimal leader unsuitable because it does not specifically take in to account matters of individuality, which not only effect the CEO, but also Chairs whose characteristics can lead to providing an effective monitoring role of the CEO. I am led to believe that there should be a renewed interest and regulation towards board processes, as given the importance of individual personalities, behaviors and competences of both board leaders and board office holders in effecting efficacious corporate governance, it appears necessary for potential board reforms to be developed with such attributes in mind. I believe attempts have been made to


align individuality with commonality of thought in achieving optimal corporate practice; through bonus based compensation systems not tied to stock market performance-attempting to motivate officers to act in the long term interests of the corporation. However, the debate of duality has continued, which I believe is due to overseeing the importance of focussing upon the underlying issue of enhancing the information available to the board which I am increasingly noticing is the necessary matter which requires focus in order to conclude the debate of duality.

3.1.6 Information Asymmetry

CEO duality enables an effective, well-informed corporate leader, more knowledgeable and able to act and react to daily and diverse situations listed corporations face, due to the enhanced access they posses to a vaster, more holistic variety of information in the corporation. However, as Kim (2008) maintains, dual CEOs have access to, but can also withhold, tremendous information, and can exert substantial influence on the board of directors by controlling the information flows to the board, leading to information being transferred to the board inefficiently. Such a structure therefore leads to increased transaction costs associated with transmitting information to the board. However, as seen above, although non dual board leadership structures arguably lessen the ability of the same due to the oversight Chairs provide, their inherent independence with little if any industry knowledge, experience or business specific wisdom, leads them to rely on the CEO, as do boards in dual leadership structures. The informational problem is not only common in both structures in this regard, but is raised in all previous arguments and aspects of the debate, and is the root of the debate itself. The matters consistence reoccurrence in both leadership structures and throughout the issues raised in the duality debate, and the inability of either side of the argument being able to overcome this problem, not only encourages one to overcome the informational problem in order to end the debate of duality, but leads one yet again to determine it is necessary to move away from considerations of structural change, and is appropriate to take an encompassing process oriented approach if one is to attempt to conclude matters. I advocate that a potential way in conquering the same would be to reconsider the information channels available to the board. Not only would

focus upon information channels project a perception of corporate stability, but would act to instill confidence in the corporations management through greater monitoring, would encourage effective board decision making due to the boards increased knowledge and would also enable organizational efficiency due to sharing information and being assessed by different individuals, which itself would enhance board engagement. Such benefits overcome the problems raised in the debate against due and non-dual structures, because it is the process influencing corporate performance which requires alteration, not the structure itself. I shall consider the theoretical approaches and empirical evidence below in order to see whether this process orientated approach is an appropriate way to proceed in the search to end the debate of duality, and to consider whether structural reform remains an appropriate consideration.

3.2 Theoretical Approaches

Upon consideration of the above perceived advantages and disadvantages of duality, it appears that the debate goes further than merely considering the best structural approach to leadership in listed corporations. The debate has apparently been conveyed through the need to seek board informational autonomy upon the acknowledgement of the boards longstanding reliance on the CEO to carry out their required responsibilities. It is clear that there is a lack of major focus on this underlying issue which is present throughout the contentious arguments raised, which is why the debate has progressed through inertia for so long-because consideration has merely focussed upon structural reform-which has the inability to impact or influence this informational problem. I shall now look to theoretical approaches in consideration of whether there is any underlying basis for taking a process orientated approach to the debate and if this is necessary, and in consideration of whether structural change is what remains required.

There remains a number of conflicting theories covering the debate. For over twenty years there has been two main schools of theoretical thought on the controversial subject; one in favour of duality and one skeptical of it which substantiates my belief that structural arguments and approaches are whats preventing from the debate concluding, due to the dichotomy this causes.

However, alternative theories have developed in an attempt to garner support and bring an end to the debate, which I believe are more appropriate in supporting my claims.

3:2:1 The Agency Theory

Agency theorists have long maintained that the positions of CEO and chairman should be separated in the name of good corporate governance and in order to enhance corporate performance.\textsuperscript{137} The agency theory is built upon the acknowledgement of the underlying premiss of the corporate entity; that there are principals who delegate to agents who execute in the principals best interests.\textsuperscript{138} Recognizing that this practice will inevitably cause a conflict of interests, goals and risk preferences, it is acknowledged that different mechanisms are used in an attempt to align the same and reduce agency costs. The major structural mechanism used in an attempt to curtail managerial opportunism in publicly traded corporations is considered to be the board of directors-the elected body entrusted with monitoring agents actions on behalf of the principals. Agency theorists advocate that the practice of duality lessens the ability of the board of directors to impartially and effectively review management on the shareholders behalf and ensure such agents interests are aligned with the principals. The overriding concern is that duality sacrifices the interests of the true owners of the corporation in favour of those running the corporation,\textsuperscript{139} because corporate managers are believed to be value destroying, self acting, opportunistic officers, motivated by their own personal interests and gains rather than the shareholders,\textsuperscript{140} which, along with reduced oversight due to there being no separate Chair, corporate performance is negatively effected.

The agency theory is the mainstream view which has been widely accepted by institutional investors, academics and even regulatory and professional bodies as the driver for separating the positions of CEO and Chair in listed corporations in order to improve accountability of the CEO.

\textsuperscript{137} Siladi, The Role Of Non-Executive Directors In Corporate Governance: An Evaluation (Faculty of Business and Enterprise, Swinburne University of Technology 2006)

\textsuperscript{138} Jensen, Meckling, “Theory Of The Firm” (1976)


and independence of the board, having been influential on an international basis in requesting boards to assign decision management to the CEO, and for decision control to be retained by a separate Chairman in order for the board to maintain the authority to ratify and monitor the decisions made by the CEO. This has resulted in non-duality being associated with an effective and functional board of directors and effective corporate performance. However, the considerations above lead me to believe that the agency approach has not been adopted in practice because it is a true encapsulation and reflection of how duality works in practice, but because the agency theory is the underlying premiss of the entire corporate entity. Thus it is religiously followed, even in its depiction of duality despite its expired, historic representations which does not acknowledge or reflect corporate reality in the modern era. The agency theory does offer a powerful theoretical perspective of corporate leadership structure, but it fails to explain how self interest alone could guide diverse managerial decisions, and despite it having greatly influenced international regulation and practice, it has been unable to bring finality to the debate of duality.

**3:2:2 The Stewardship Theory**

Whereas the basic premiss of the agency theory revolves around agent managers considering themselves as individuals without any other meaningful attachments, leading them to act in their own self interest at the expense of shareholders, the stewardship theory instead places emphasis on facilitative, empowering structures with agent managers considered as beholding a sense of loyalty to their corporations, leading them to strive for achievement, a good reputation and recognized effective performance. Stewardship theorists argue that this leads agent managers to seek profit maximization and results in the enhancement of shareholder interests and returns. The stewardship theory thus supports CEO duality in the belief that such leadership adds to the structural and psychological empowerment of the CEO, further encouraging and allowing the

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142 Braun, Sharma, “Should The CEO Also Be Chair Of The Board? An Empirical Examination Of Family Controlled Public Firms” (2007) 20(2) Family Business Review 111-126

143 Braun, Sharma, “Should The CEO Also Be Chair Of The Board? An Empirical Examination Of Family Controlled Public Firms” (2007) 20(2) Family Business Review 111-126
dual officer to better serve the corporation and its shareholders. The theory is based on the principle of unity of command, which maintains that clear and unambiguous authority concentrated in one person is essential for effective management. This is arguably enabled because clear lines of authority are created which not only fulfills a regulatory purpose, signaling to stakeholders who is accountable, but facilitates a clear and authoritative sense of strategic decision making, which empowers management and boards of directors to respond effectively in the corporate environment, where strong, directive, stable, and unconfused leadership is seen as critical for organizational success.

However I believe the stewardship theory is extremely narrow and simplistic. It focusses on personal traits of corporate officers, and fails to take the numerous internal and external, organizational and environmental factors, which drastically influence corporate leadership practice, in to consideration. Yet, the stewardship theory is the approach which corporate officers tend to favour, and is the theoretical approach which accurately explains their position towards duality in practice, and explains the dichotomous state of the debate of duality as discussed above. However, in practice, CEO’s and Chairman are battling the views of regulators, investors and society who favour the agency theory, and resultanty corporate officers are restricted in adopting a stewardship approach to corporate leadership structure in practice. This elucidates how current practice has a restrictive theoretical underpinning and explains divergence of views towards duality as a leadership structure and disparities in international practice.

It is clear that the theoretical approaches towards leadership structures are split, as are those who support the different approaches in practice. Such rigidity towards favored theory and practice has resulted in constant contention towards confirming the ideal structural practice, and I submit that such entailing stubbornness has led to the debate persisting as opposed to abating, and has restricted the debate from developing away for its structural insistence and being considered in a

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146 Braun, Sharma, “Should The CEO Also Be Chair Of The Board? An Empirical Examination Of Family Controlled Public Firms” (2007) 20(2) Family Business Review 111-126
more appropriate light. This is because of the dominant theoretical approaches which have sparked and progressed the debate and influenced practice are themselves portraying a narrow, simplistic perception of duality and do not reflect reality of corporate practice.

**3:2:3 Alternative Theories**

Alternative theories have been developed in an attempt to properly account for the true nature of corporate leadership practice, in the hope of influencing and benefitting corporate governance practice. Whilst the agency theory and the stewardship theory are the dominant paradigms which have allowed scholars to develop substantial knowledge about board leadership and have influenced international regulation, investor perception and corporate practice, after over twenty years the theoretical approaches have not been able to conclude the debate of duality in listed corporations. I argue that the presiding theories are no longer applicable in the modern, international corporate environment, and are not the helpful and practically beneficial theoretical underpinnings they aim to be. If one wants to bring finality to the contentious and dichotomous debate of duality once and for all, one must move away from the longstanding, dominant theories and their insistence on finding the optimal corporate leadership structure, and their extreme and facile views of not only the corporate entity but of human nature, and acknowledge current, and ever changing practice to account for the affects of duality in order to beneficially influence practice in order to enhance corporate governance. Such discontent with the theoretical underpinnings of the duality debate has been widely acknowledged, and resultantly acted upon in the form of alternative theories having been developed in attempt to overcome the failings of the dominant paradigms.¹⁴⁷ Such include the resource-dependency theory which recognizes that corporations possess critical resources—such as a board of directors with expertise, knowledge and a necessary skill set—which gives them a competitive advantage. The theory accedes that separate CEO and Chairs are more likely to enhance corporate performance because there are two top-level leaders focussing on different areas of key success resources. However, again this theory does not fully recognize corporate reality, and does not effectively account for matters which influence corporate leaders decision, ability and desire to pursue key resources. The theory merely focusses upon environmental dynamism and resource scarcity in consideration of the

¹⁴⁷ Directors And Boards, “The Great Divide” (2009) Board Leadership
effects of CEO duality. This theory does however provide a contingency perspective in consideration of CEO duality, which has been adopted more holistically in the contingency theory.

### 3:2:3:1 The Contingency Theory

The contingency theory is the alternative theory which has garnered the most support in the literature and recent duality studies. The contingency theory considers many different internal and external factors which could affect the choice of leadership typology, including resource scarcity, environmental dynamism, board independence, culture, legacy, officer and board skill set, personality traits and the life stage of the corporation. While contingency theorists may argue that duality can be valuable in rapidly growing corporations in its early stages by providing a strongly, clear figure of authority, or in turbulent and complex circumstances, duality may be considered as negatively impacting what is considered effective corporate governance in profitable corporations where there is a long standing dual CEO-Chair who may be pursuing entrenchment. Contingency theorists argue that the agency model depicts dual officers as “opportunistic, self-maximizing shirkers” which is as extreme a model as the stewardships depiction of the CEO-Chair as an “altruistic, self-sacrificing steward of corporate assets”. Contingency theory differs by allowing for the complexity of both internal and external factors to come in to play, acknowledging corporations differ in many regards, not merely in the attitudes of the corporate officers and conceding that all of which have the ability to affect the ability of a dual leadership and non-dual structure enhancing corporate performance in practice. The contingency theory resultanty maintains the position that determining whether CEO duality is beneficial and enhances corporate performance is dependent on many factors influencing and affecting corporations diversely, and thus can not mandate non-duality as the only leadership structure for corporations worldwide, or require duality as a necessary requirement for listed corporations. This therefore supports my preposition that focussing on corporate leadership

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149 Directors And Boards, “The Great Divide” (2009) Board Leadership  
150 Directors And Boards, “The Great Divide” (2009) Board Leadership  
151 Directors And Boards, “The Great Divide” (2009) Board Leadership
structure is only enraging the debate, due to the multitude of factors which can affect the effectiveness of any leadership structure—especially in modern day listed corporations which succumb to numerous influencing factors—and a refocus on processes will enable the debate to progress, preferentially towards finality. However, although the contingency theory is arguably the most encompassing theory which truly reflects and encapsulates the nature of the corporate environment, filling gaps left by the dominant and traditional theories, it has also been unable to bring finality to the debate. The theory has only been able to enrage the debate by asserting that there is actually no preferential board leadership structure to mandate for all corporations, but there are many factors which vary systematically across the environmental conditions of corporate dynamism and complexity which impact the effectiveness of the practice and impact corporate performance differently in all individual corporations. Thus I am able to confirm that I need to determine and propose a practical process to implement if I am to attempt to bring finality to the matter.

3:2:4 The Theoretical Result

As previously discussed, it is clear that the agency theory has been adopted in corporate life, with duality being restricted internationally by national regulation and by investor influence. However, I advocate that the agency approach is not a true encapsulation and reflection of the real underlying issues of duality and does not reflect corporate reality in the modern era. It too is clear that the alternative theories which have developed in an attempt to explain duality and its affects and influence practice, do not induce finality of the debate. All of such resultantly begs the question of whether there actually is an end to the debate of duality in listed corporations, especially when considering that the most accountable theoretical underpinning, which I believe to be the alternative contingency theory, is unable to provide clear support for or against the practice. It has become increasingly clear why the debate of duality continues to this present day and remains an international debate, when considering the theoretical premiss of duality remains uncertain, contentious and disputed, and is obvious why standard international practice has become to disfavor duality when it is easy to continue through inertia by continuing to succumb

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to the agency theory as the underlying premiss of the corporate entity, resulting in the actual practice of duality dying out while the debate surrounding the same continues. However, the contingency theory does give some support to my belief, noting there is no structural answer to the debate, which thus leads me to determine that a re-shift in ones focus on corporate leadership structure should be made to process, in an attempt to overcome the underlying, informational requests and concerns advanced by advocates on both sides of the debate and acknowledge and overcome the numerous factors which surround the duality debate. Despite my inability to confirm the optimal leadership structure, I will still be achieving my aim of bringing finality to the debate in the interests of enhancing corporate performance. The efficacy of my move towards finalizing the debate by taking a Process Orientated Approach (POA) rather than considering what structure has earned the title of best leader, is considered an empirical question.\[153\]

### 3.3 Empirical Evidence And Research

The contrasting theoretical treatments used to weigh the duality debate are dichotomous and clear cut. Empirical findings on whether we should be mandating against the practice or supporting it, however, are not. There have been countless studies conducted, but I shall consider those which I feel emphasize how empirical evidence has progressed through twenty years of diversification and doubt, bringing further contention and confusion to the duality debate.

The systematic search for a relationship between duality and firm performance began with the Rechner and Dalton (1989, 1991) studies which form a cornerstone of the CEO duality literature, as they sparked initial scholarly interest in the topic and set the foundation for all future CEO duality research. The studies provided an early indication of the debates complexity, due to the conflicting evidence the studies yielded.\[154\] In the first study performance was measured by stockholder return, which found no significant difference linked to CEO duality, whereas in the study of 1991 which used accounting-based measures the results found that firms with a separate board Chair outperformed firms with CEO duality. Donaldson and Davis (1991), the first researchers to introduce the stewardship theory to the board leadership debate, went on to

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\[154\] Directors And Boards, “The Great Divide” (2009) Board Leadership
challenge Rechner and Dalton’s findings due to criticism of their methodological approach. They argued that duality increases performance effectiveness and found, in their multi-industry study that those practising duality outperformed those with separated roles. After the conflicting evidence the search for a explicit relationship between CEO duality and firm performance became more nuanced. Scholars began questioning the logic that CEO duality must be universally beneficial as advocated by the stewardship theory, or universally detrimental as assumed by agency theorists. Boyd (1995) strongly asserted that “the critical question is under what circumstances does the consolidation of power and decision making afforded by duality outweigh the potential abuses described by the agency model?”. Boyd argued that CEO duality would be beneficial under conditions of high environmental uncertainty because CEO duality provides unity of command and speed of decision making that is necessary to manage uncertainty, and such an environment is typical in larger, public, listed corporations, unlike where there are conditions of low environmental uncertainty, in which the risk of CEO opportunism increases, making non-duality, with its independent oversight, more beneficial. Boyd’s (1995) study generally supported these predictions, supporting a contingency model of CEO duality’s performance effects, his findings lending support to the notion that each corporation is unique, and circumstances may exist where duality is more advantageous for a firm than harmful. Further complicating the theory around CEO duality, Baliga, Moyer, and Rao (1996) found no overriding relationship between CEO duality and firm performance and concluded any ill effects of duality would only be minimal, whereas Brickley, Coles, and Jarrell (1997) contend, having recognised the underlying informational problem raised in the duality debate, finding independent board Chairs increase agency costs through reducing the effectiveness of information flow between the CEO and Chair, and resultantly the board. Researchers such as Worrell, Nemec, and Davidson (1997, 1998, 2001) went on to consider plurality of Chair, CEO and President positions of the corporation and was able to conclude that while plural leaderships of large U.S. firms faced negativity, there is very little reaction to dual leadership structures. Their 1998 study even found investors reacting negatively to the consolidation of all three positions, but positively to the creation of a dual leadership structure. After a decade of rigorous investigation, Dalton et al. (1998) attempted to bring finality to the

155 Directors And Boards, “The Great Divide” (2009) Board Leadership
debate and determine the effects of duality on firm performance relationship once and for all against an array of variables, but was only able to deduce statistically significant but practically insignificant correlations which is reflective of the overall, inconclusive trend in CEO duality research.

The plethora of conflicting, contradictory evidence and inconclusive empirical finding has effectively ended the search for a direct and simple link between CEO duality and firm performance. Scholars have instead began to consider, and continue to deliberate, more complex interactions and classifications of CEO duality, considering other outcomes associated with CEO duality that are more proximal than firm performance. This has enraged the debate of duality and the multifarious measures of performance of studies, resulting in scholars now continuing to point out that the issue is more complex than the simple distinction of combined or separate CEO and Chair roles. This has led empirical study to be continually exasperated, contextualized, and corporate specific.156 For example, Coles, McWilliams, and Sen (2001) found a positive relationship between a combined Chair and CEO and a firm’s after-tax operating profit,157 with Rhoades et al. (2001) finding that, “while there is a negative relationship between non-duality and firm performance for firms in the anti-takeover studies, there is a positive relationship for firms in the compensation studies”.158 Tuggle et al. (2010) studied the attention of the board members on monitoring the management which was found to be negatively affected by the duality,159 while Krause and Semadeni (2013) found CEO–Chair separation is only beneficial if enacted as a solution to a corporate problem.

The research examples given encapsulate how the debate on CEO duality leadership is characterized by considerable divergence of opinion and little consensus.160 Having given up in this regard in finding the optimal leadership structure in terms of enhancing corporate

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158 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
159 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
performance, research has developed by focussing on corporate specific organisational characteristics and business environments\(^{161}\) in the hope they can find more restricted answers and conclusions to the duality debate-moving away from the debate being a structural concern, towards finality being seen as a processual, individualistic concern.

### 3.4 How To React To Twenty Years Of Conflict?

I submit that the disparate practical, theoretical and empirical evidence has been a significant factor which has influenced regulators and mainly investors to take the international approach they have-merely as a misguided attempt to be safeguarded from potential repercussions duality is traditionally believed to cause, under the influence of the agency theory as the underlying premiss of the corporation. I argue that the lack of a guarantee that separating the roles brings any benefit, with “the only clear lesson from empirical studies being that there has been no long-term trend or convergence on a split chair/CEO structure”,\(^{162}\) suggests that the structural focus towards ending the debate has become redundant. Thus it seems appropriate if not necessary for a processual approach to be taken to the debate in order to bring finality to it. This is because it would provide an approach which would be able to recognize the underlying issues facing dual and non-dual leadership structures being CEO reliance due to boards informational deficit leading to ineffective CEO monitoring, and allow one to react appropriately to overcome such an issue. Re-focussing ones efforts would allow the energy currently fueling the multifaceted debate to focus on enhancing corporate governance practices\(^{163}\) rather than continuing to add to the inconclusive and contradictory theoretical and empirical evidence of the debate failing to yield any beneficial link between CEO duality and firm performance. If current practices remained unchanged, noting empirical evidence has infact progressed beyond the traditional agency/stewardship dichotomy in which one structure must reign supreme, and adopted a contingency


\(^{162}\) Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090 (John Coates before Congress (2009))

approach towards empirical study which has led the empirical debate to progress through conditional, idiosyncratic and complex contingents, such as firm characteristics, industry, environmental dynamism, turbulent circumstances of financial crisis and resource scarcity for example, then there leaves a host of potential intervening variables to be explored. It is therefore argued that the debate on duality is far from being concluded in any structurally effective terms, due to such exasperations of multifarious measures of performance being pursued in the study of the affects of duality. I assert that future empirical studies will only yield evidence that is mixed and context specific, either continually enraging the debate to progress through inertia, or finality brought to the debate only in context specific regards.

Aiming to progress the debate therefore requires a re-focus of attention. Given that I agree with the propositions of the contingency theory that performance implications of CEO duality are contingent on an array of factors, and with the art of corporate governance requiring ways to be found in which different corporate forms can function well, I argue that it is wrong to attempt to mandate for or against duality which the debate of duality has attempted for over twenty years. A generalized mandate against either structure is inappropriate because not only does the optimal board leadership structure remain a contemporary and contentious issue which is unlikely to be determined, but CEO duality is too important and too idiosyncratic for all corporations to adopt the same structure under the misguided guise of what is deemed best practice due to differences in individual organizational circumstances. Corporations should be free to determine the leadership structure which is most appropriate to their needs, assessed as a strategic concern in the context of each individual corporation and their internal and external needs, resultantly


165 Moscu, “Does CEO Duality Really Affect Corporate Performance” (2013) 2 International Journal Of Academic Research In Economics And Management Services 1


167 Wharton “The Cost of Entrenchment: Why CEOs Are Rarely Fired” (2011)


169 Vo, “To Be Or Not To Be CEO And Board Chair” (2010) Paper 184, 76 Brooklyn Law Review 65

choosing the leadership structure to enable the corporation itself to best deploy its governance resources to gain and sustain a competitive advantage.\textsuperscript{171} This is opposed to investors and regulators determining the leadership structure they think is most appropriate-based on twenty years of inconclusive and undetermined literature, empirics, arguments and investor influence. Thus, it is becoming increasingly necessary to implement a process to promote effective corporate practice in diverse listed corporations in response to the inconclusive and conflicting theory, empirics and practice, and in response to the misconceptions and misunderstanding which have wrongly led the debate of duality to progress as a structural concern.\textsuperscript{172}

4 An End To The Dichotomous Debate

I have discussed what is known about CEO duality, which has enabled me to determine the necessary steps to take to progress matters towards finality. I now aim to determine whether the debate can be sufficiently concluded in light of the above discussions, and offer an agenda for moving towards a resolution to overcome the theoretical and empirical ambiguities and the disputes surrounding this ubiquitous phenomenon.\textsuperscript{173}

4.1 Can The Debate Of Duality Be Concluded?

The debate of duality remains such a contentious matter, because mere structural change will not resolve the underlying issue which is present in both dual and non-dual leadership structure. I advocate that in order to conclude the debate-one must first accept that there is no optimal leadership structure which can be generally mandated across all listed, international corporations. I argue this is easy to assert and even easier to welcome considering not only are there many individuals and thought leadership organizations who agree that the particular leadership structure selected by a corporation is largely dependent on the individual corporation,\textsuperscript{174} with no

\textsuperscript{171} Krause, Semedeni, CEO-Coard Chair Separation: If It Aint Broke, Dont fix it (Conference Board Director Notes 2013)

\textsuperscript{172} Krause, ‘CEO-Board Separation: Promises And Pitfalls” (2013) Online: Conference Board Governance Center <http://tcbblogs.org/governance/2013/02/06/ceo-board-chair-separation-promises-and-pitfalls/>


one structure appropriate or best able to serve all corporations effectively,\textsuperscript{175} supported by empirics which are largely inconclusive in finding an optimal leadership structure. This has led to explain practical situations where both dual and non-dual leaders having been vilified and deemed responsible for corporate failings and scandals, and explains why there remains continued contention in the debate of duality despite the current practical investor influenced mandate against the practice.

Upon embracing a contingency based approach towards corporate leadership structure and accepting that there is no general, optimal leadership structure, one can then move towards taking a POA to overcome the issues attributable to the debate of corporate leadership structure in listed corporations which have caused the prolonged debate to be continually infuriated. This will enable finality to be brought to the debate once and for all, achieving the the aim of enabling the holistic benefits of effective corporate leadership to follow, which has not been achieved by the traditional structural approach. I shall now consider what such an approach would entail.

I believe that the debate of duality is fully able to be concluded, despite the prolonged, contentious and inconclusive debate which has enraged as detailed above. I assert that if one considered the actual underlying issue which is present in both leadership structures, which is causing the contention and the debate to continue, and one solves it, finality will finally be achieved. I believe the underlying issue which is causing the debate to continue is evident from the arguments raised by either side of the debate and the assumptions they base such arguments on; while those who are against the practice of duality rely on the assumption that a non-dual leadership practice will provide a board Chair who is independent of management, creating an independent board which is the critical variable in enhancing corporate performance by increasing boards ability to access information about management’s performance without interference from the CEO, duality supporters advocate that a single leader provides a unified corporate voice and facilitates better internal communications which increases information flow to the board. Thus, mandating against duality in order to increase substantive board independence is pointless, as it fails to achieve this goal and is the reason why the debate continues to rage despite the practical investor influenced mandate in international corporate

\textsuperscript{175} Deloitte, “Board Leadership: A Global Perspective” (2011) Center For Corporate Governance
practice, leading one to believe a POA is how finality will most appropriately be brought to the
debate. The POA offers a new analytical paradigm that reorients focus away from board structure
and towards board decision making processes, which is more important to effective oversight
than changing the title of an individual board member. It has the ability to recognize the
underlying resistance against the practice of duality essentially being the concern of the boards
reliance on the CEO and lack of independent access to information which is covered in very few
codes, laws and regulations. While in non-dual leadership structures the independence of the
Chairman requires ones reliance on the CEO and the information they have access to, dual
leadership structures have no added monitoring entity of the CEO, despite ineffective lead
directors and other additions to the board, which increases the CEO’s power and ability to taint
information which the boards rely on the CEO to disclose. Therefore, ineffective monitorial
oversight in dual and non-dual leadership structures hinders the boards ability to undertake its
responsibilities and run the corporation effectively and efficiently, because they are reliant and
restricted in the information they are given and the quality of the information they receive. With
the CEO being the most expert and knowledgeable person about the corporations challenges and
strategic outlook due to unrestricted access to different information gathering channels on
demand, the CEO is thus also boards primary, and typically only information channel in both
dual and non-dual leadership structures. While the CEO has tremendous informational
advantages, the board in contrast, does not have access to alternative information gathering
channels to obtain the insider information necessary to fulfill board functions effectively. I
advocate that multiple information channels are critical to the board’s decision making process,
critical to the oversight of the leaders of the corporation and critical to ensure efficient, effective
and well informed decision making to benefit corporate performance and corporate governance,
and end the duality debate by overcoming the contentions which the debate raises which all stem
from this underlying problem. Although the CEO is the most expert and knowledgeable person
about the corporations challenges and strategic outlook, and may arguably be the best officer to
have assess to the necessary information to guide the corporation, the available information is
too unnecessarily restricted to this leader which raises numerous problems as discussed

177 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
previously. The information gap can and should be reduced through independent access to various databases, strategy documents, department reports, and other forward looking information the corporation compiles. Directors who access such information through different channels will not place overconfident reliance on the authoritarian biases which lead to unquestioned acceptance of the CEO’s recommendations and proposals. The board will be more empowered to undertake informed and intelligent questioning to uncover the weaknesses of the executive’s approach as well as providing directors with an informed way to bring their expertise to bear on helping the corporation to succeed through the enhancement of the boards ability to monitor and oversee the CEO. This attempt to reduce unnecessary CEO power will help to overcome the underlying issue of informational autonomy which has attributed to the debate of duality continuing for so long. I hope this accurate and reliable understanding of board practice will influence policy makers and investors in to disregarding their current insistence on a misguided focus on structure, towards acknowledging how the problem of board leadership requires a POA to overcome contentions raised and enable improved corporate governance and corporate performance.

However, one must not be so naive as to think that a twenty year debate can easily be answered by offering the presumption that enhanced informational gathering channels will be without issue itself. An implication of adopting a POA in which independent information gathering channels are enhanced for the benefit of the board may be the criticism that this would place the board in a position of managing, not monitoring and effectively undermine the CEO’s ability to run the corporation. With the CEO being best placed to run the corporation from experience, the knowledge one beholds and the skills one possess, I believe any such criticisms are easily countered by acknowledging each member of every corporate board has their own purpose and their own responsibilities, whether delineated in their articles of association, through proxy disclosure or required through regulatory insistence as previously discussed. The CEO will remain leader of management, and the board will not become managers because they are appointed to the board with monitoring responsibilities. This contention can thus be easily overcome by requiring enhanced clarification, description and disclosure of the responsibilities

178 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
of the executive and non-executive members of the board than required at present. Not only will this enable each position to be monitored by shareholders to ensure their duties and responsibilities are being carried out as prescribed, but will also bring clarification to corporate process and board decision making, which will increase investor, and also societal confidence in the corporation, overcoming further issues raised in the debate of duality. The board’s goal is to develop a deeper understanding of the business and procure the information it needs to monitor effectively, not to unduly undermine the ability of the CEO to lead, and there are many other board process which can be adopted to overcome the potential issues faced by increased information access for boards, such as requiring board members to inform the CEO about meetings with lower-level managers, plant visits etc after they have taken place. One also acknowledges that there are practical matters which could undermine taking a POA, when considering the channels themselves will determine the types of information available to the board and the amount of bias or taint associated with that information which consequently affects the options and outcomes available to the board and the effectiveness of monitoring the leaders of the corporation. This is present in the CEO reliant approach taken at present, which leaves outside directors unsatisfied with the financial, operational and strategic information they receive in comparison to their nonindependent counterparts, not only because of the quality of the information provided itself, but because of the ability for such information to be tainted by unintentional and intentional biases of CEOs, or even by corporate ombudsman's who are intended to increase boards informational access. Even with the assumption that the board receives information that is unbiased, complete, and accurate, there is also the issue of whether the board themselves have the time or requisite skill necessary to properly assimilate the information-as the boards usually receive their information at the last minute, with it often being poorly organized and voluminous, especially considering non-executive board directors are part time employees who may not have the time to digest the increased information they are given. This results in any POA adopted being of little substantive difference, resulting in it being just another compliance requirement that never rises above the level of a check-the-box

179 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
180 Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090
obligation. However, I advocate that this will not actually be the effect of implementing a POA. Corporations will be incentivized to take the POA, because the approach is designed to fit the endogenous nature of corporate governance. Unlike the structural approach at present, the POA will not only require independent information gathering channels to be put in place, but will facilitate further consideration as to how well designed and robust the implementations are in helping specific boards themselves achieve true independence and benefit performance, and how corporations themselves can avoid corporate specific problems raised in new approaches adopted. This corporate specific approach is beneficial, and compliments the current approach adopted in contingency theory and also empirical study, unlike the current structural approach to change which assumes corporations are all the same and act the same in their different business and regulatory environments.

Although I acknowledge that there will be potential criticisms of taking a POA towards ending the debate of duality, I believe that the criticisms can easily be overcome and the need to end the dichotomous debate of duality after over twenty years outweighs the same. I assert that until boards have meaningful informational autonomy, they will never function as consensus-based decision makers or as the effective monitors that policy makers and the public desire, and shareholders and corporate health requires. Despite the critical importance of the flow of information in the work of a board, information has been surprisingly underemphasized in the scholarly and policy debates on board reform, as has the recognition of such being the underlying issue of the duality debate, as has its potential to actually bring finality to the debate. I seek to change this, by seeking to improve the quality of board decision making through encouraging and increasing greater information flow to the board, which facilitates effective consensus-based decision making, lessens CEO dependance and enhances leadership monitoring, resulting in the benefits of effective corporate governance flowing. I show now consider ta POA to be adopted in order to end the debate, before considering its implementation.


4.2 How Can Finality Be Brought To The Debate?

Placing an outside director in the position of board chairperson does not solve the informational deficiencies endemic to most boards, and the CEO holding the Chairman position creates numerous obstacles which lessen the information the board receives—both leadership structures placing great reliance on the CEO to gather information, and to run the corporation efficiently and effectively. With both sides of the debate wrongly clinging to structural mechanisms as a means to achieving greater board autonomy, the focus needs to be placed on a POA and attaining better information processes, which are in fact the solution. I thus advocate that corporate governance should focus on a POA and allow corporations to dictate the best structure for their individual board. There are numerous different approaches which could be taken by the board of directors, however I shall consider the approach which I believe is the most appropriate action to take to reflect modern day corporate society and practice, and the approach I believe best brings finality to the debate by overcoming the underlying contentions and issues surrounding the debate—being the adoption of board information portals. Board portals may not be a revolutionary proposal for boards, but they are a necessary, and undermined evolutionary development in improving communication and efficiency, and the way finality is brought to the debate of duality,\textsuperscript{185} by opening the lines of communication and providing clear, updated, and unbiased information for directors outside of the boardroom,\textsuperscript{186} aiding monitoring and assessment which is necessary for the boards to fulfill their required functions.

Modern public corporations are twenty four hour entities which require twenty four hour oversight, and I advocate require constant electronic informational access. Board work, oversight, decision making and strategic planning does not stop when quarterly meetings end. Directors are expected to continue conversations beyond meetings, but without a portal, this is not always possible, and is not always convenient for hyper-sensitive information to be communicated in real-time, distributed with zero-days notice. Improving productivity is a must and technology I believe, holds the key. The risks faced by corporations today necessitates improved board communication techniques to address the quality, quantity and speed of board

\textsuperscript{185} Cormican, “Board Portals-Evolution In Board Communication” (2011) Applied Corporate Governance, Keeping Good Companies

\textsuperscript{186} Recorr, “The Dangers Of Asymmetric And Insufficient Information Flow To Boards” (2013) Enlight Research
material presentation. Successful corporations must have the ability to be quick to take advantage of opportunities that come their way-and disseminating the pertinent details fast through a portal can deliver the first mover advantage that can make all the difference. Given the unpredictability of external events such as M&A activity, market swings and natural and man-made disasters, it should be expected that circumstances at some stage will dictate the need to schedule an online meeting within 24 hours notice and in that short timeframe make all relevant documentation available. Board portals will allow this to happen, as such confronts the issue of mobility of board members. Only a portal can achieve such modern day necessity. I believe listed corporations should all adopt board portals which allow them to establish secure online environments in which board members can access corporate documents, communicate, make notes and collaborate. Implementing a portal system will provide an information channel which enables board members to overcome the obstacles they currently face in accessing and properly analyzing information, it will enhance board knowledge and understanding-improving their ability to act, monitor and make effective decisions to guide the corporation to continual corporate success. With all of the necessary information in one central location, portals can cut down on travel, eliminate mailing and delivery hassles, increase communication among members, and make board materials easier to read, and allow content to be uploaded and edited in a fraction of the time it does to prepare and disclose hard copy documentation. I believe that all of the above incentivizes and engages part time non-executive directors, and executive directors, and enables the board to stay connected more easily, and also assists corporations in abiding by regulations calling for greater disclosure and better record retention. The adoption of a portal thus culminates in corporations being able to demonstrate that they are a well governed, well led, effective board-preventing the debate of duality from unnecessarily continuing. The direct access to information databases will remove the selection and reporting biases that come from having an intermediary like the CEO, a Chairman or even a corporate ombudsman, and will provide a check on the CEO’s intentions, subsequently enabling portals to increase the boards

187 Cormican, “Board Portals-Evolution In Board Communication” (2011) Applied Corporate Governance, Keeping Good Companies

188 Cormican, “Board Portals-Evolution In Board Communication” (2011) Applied Corporate Governance, Keeping Good Companies

189 Cormican, “Board Portals-Evolution In Board Communication” (2011) Applied Corporate Governance, Keeping Good Companies
monitoring and advisory functions by being armed with more necessary, accurate information,\(^{190}\) and equipping the board with the ability to monitor daily corporate and market activities. This can be done by enabling many officers to upload necessary information to the portal, enabling greater collegiality of decision making, or even engaging an independent source to provide unbiased, non-proprietary information to be disclosed on the portal. Although portals are currently restricted to one-way distribution of documents, I believe that there should be the ability for such a two-way channel that supports the sharing of notes and other communications between board members themselves. Enhancing the current ability and the use of portals will be of great importance and benefit to the boards of directors. Although non-executive directors are part time officers who typically devote an average of 4.3 hours per week to their positions,\(^ {191}\) with such information being streamlined in this efficient and convenient manner, and benefitting from the greater accessibility of a portal, they will be able to keep up to date with key developments more easily in a more timely and credible manner, while not being subject to the bias’s which arise through reliance upon the CEO or another for their information, improving the boards ability to advise and provide oversight. Such a POA compliments modern day corporate boards who are becoming more and more independent, with boards striving to get different perspectives, which only magnifies the problems associated with asymmetric information. In order to gain valuable, diverse perspectives, its appears obvious that a board should be given more than just the one, traditional internally controlled source of information about the corporation and industry. Board portals are able to gather-in one online highly secure location-all the practical information and news of the board and business, meeting details, all documents and board packs, note taking functions and collaborative tools, and provides the ability for vast, unrestricted amounts of important information to be disclosed to the board in a convenient, timely and cost effective manner. While board portals which are typically been used by very few firms, only use such systems to provide information overload to the board in the run up to meetings such as Nasdaq who implemented Directors Desk portal software, along with 66% of public corporations\(^ {192}\) merely using portals as an alternative method for providing paper

\(^{190}\) Sharpe, “Informational Autonomy In The Boardroom” (2013) 9 University Of Illinois Law Review 1090


information packs prior to board meetings. I believe the use of portals should be increased. Improving the volume, quality, and timeliness of information flow than at present, enabling board portals to provide a source of extensive, continually updated important information in order to make well informed, effective decisions and enhance the monitoring abilities of the CEO’s actions more effectively, with boards requiring independent access to every part of the organizations they oversee. Current practice sees management inherently hesitant to provide boards with such access to information, and rarely provide their boards with unfiltered, although often publicly available, non-proprietary information, worsening asymmetry and increasing the potential of the board being restrained, limiting their knowledge and awareness. I believe after twenty years of the duality debate the time has come to end it, and thus believe it is necessary for all listed corporations on an international scale to adopt this technological approach on this wider, effectively developed basis as an information channel. Advancing down this technological route is important, in order to improve efficiency and organization of meetings, processes and performance, and to provide an efficient platform for easy communication and information exchange to enable effective decision making and greater monitoring and assessment abilities. As the role of boards shift along with rising independence, asymmetry has greater potential to inhibit effective decision making than ever before. In order to combat this problem, directors and management both must take these active steps of granting boards access to unfiltered information from different perspectives; directors must be diligent in asking questions and communicating with one another to fill in gaps in information, and management must make a concerted effort to provide transparent, concise information. No matter what the industry or size of the company, board portals offer an efficient way of facilitating board process. I argue that adopting this specific POA brings finality to the debate by overcoming the contentions raised in the debate: informational asymmetries are lessened by greater access to information which also assists in overcoming the detriments associated with independent non-executive Chairs, improved board decision making is enabled through the provision of enhanced knowledge in a more timely manner, which also drastically improves the boards ability to monitor the CEO, and the ability of

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193 The Corporate Board ‘Leading a Board at the Speed of Instant’ (2011)

one officer's personality, behavior and relationships to cause detriment to corporate practice is lessened due to more collegial decision making. The contention underlying leadership structure is thus removed and corporate practice is enhanced. However, in order to move from a structural approach to a POA in international practice, it is necessary to consider the appropriate implementation which is required to make my proposals possible.

4.3 Implementing The Approach

There are numerous ways in which boards can increase their information flow to the board of directors, however I have focussed upon the POA of using portals which I feel is most appropriate in the modern age of listed, internationally present corporations. I believe board portals have the greatest ability of being implemented, not only because corporations have already been influenced to an extent by adopting a similar approach in practice, but because I feel it is the most suitable approach to achieve my aims and overcome the issues having surrounded the duality debate.

Some corporations have adopted board portal approaches through choice, however I propose to take a different approach to the implementation of the same. I shall not be requiring legal change, or suggest greater regulation of the corporation in order to bring about increased access to information as I do not believe it is appropriate to require corporations to beholden to legal rules when it is they who are best placed to determine what is best for their being. I believe such only restrict corporations from fulfilling their individual potential and restrict effective corporate governance from being established, because it is taking decision making abilities away from those best able to determine the necessary processes to guide the corporation to success, removing great flexibility which corporations need in order to continually adapt and react to their business market and investor environments, and creating unnecessary costs. However, I do believe corporations should be regulated to an extent in implementing the POA, with their corporate governance practices not solely left for investors to alter as they so wish, due to the holistic importance of corporations, and the corporations potential effects upon investors, society.

and economical health. However, acknowledging the importance investors have in monitoring corporations, such as the flexibility to adapt to investor demand, and the ability to assess and monitor corporate performance, I thus believe a middle-ground approach should be taken, where investors can still indirectly influence practice. I thus believe an addition to other regulatory channels is required, such as the corporate governance codes as created in Canada and England, and the stock exchange listing requirements. Listed corporations will comply with the POA not only to gain the holistic and important advantages of listing and avoid the pre-existing sanctions, but because they are now more likely than ever to implement effective corporate governance processes to impress investors they continually aim to please. I believe that an internationally co-ordinated POA is required, recommending implementation from all stock exchanges or/and corporate governance codes-influenced by the OECD principles of corporate governance who too would need to be persuaded by the same. I believe differential international approaches are inappropriate when considering the corporation itself is an international entity with international influence and possibly an international listing, and I thus argue that commonality would be welcomed and praised to overcome this debate. Due to the non-restrictive nature of a recommendation, international implementation will enable each jurisdiction to adopt and implement the recommendation in consideration of their own markets, their own legal, social and cultural issues and state of economic development. Such can be respected because I am only advocating for basic implementation of providing an enhanced information channel-as opposed to requesting a necessary, specifically detailed approach to be taken. I believe the approach to be taken should be a matter for the board and the corporation to decide, determining what is best for them, and what will be most likely to increase the information flow to the board, and to collegially decide what the board requires to be able to make effective decisions and monitor their leaders efficiently. This will prevent corporations from taking an institutional/box-ticking approach to corporate governance-only disclosing the basic information required, but requiring

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196 Siladi, The Role Of Non-Executive Directors In Corporate Governance: An Evaluation (Faculty of Business and Enterprise, Swinburne University of Technology 2006)


198 Siladi, The Role Of Non-Executive Directors In Corporate Governance: An Evaluation (Faculty of Business and Enterprise, Swinburne University of Technology 2006)
collegial discussions to determine what is necessary and most effective for the specific corporation. In order for investors to gain confidence in such a process, I believe the basis of the requirement of adopting an information channel to overcome issues of informational accuracy requires disclosure-disclosing the approach adopted, the method and reasons for doing so, and the information which the board will be given access too to enable effective and well informed decision making for the board-which investors can then assess, monitor and influence. Increasing the information available in this way has the ability to enhance the corporations ability to be confident in facing investors with the leadership structure they think is suitable-whether that be a dual or non-dual structure, knowing the underlying issue which causes great contention and is the reason why the debate of duality enrages, has been appropriately approached, and the information provided to investors will give them confidence in the corporation and its ability to effectively govern. I believe such an implementation is appropriate because international practice largely rests on disclosure based approaches for corporate governance matters which are arguably effective. Boards would retain the flexibility to determine the technical matters which come with implementing an information portal, enabling them to adapt with new developments, for instance; ensuring the board are technically literate and trained appropriately, ensuring the implementation process is not burdensome to the corporations internal processes and ensuring internal policies and procedures are updated.

Although corporations will be free to determine the most appropriate information channel for their corporation-but required to implement it-I personally believe a board information portal is the best implementation in modern day listed, internally present corporations, as emphasised above. Although arguments may be raised with regards to costs of software, and the security of software-not only has there been improvements in security, which in fact makes a technical information sharing system more preferable than paper based systems-but costs can be kept to a minimum in modern day technology. Whereas a few years ago, it might have been a struggle to get board members to consider using board portals, portal technology has evolved to meet the needs of diverse and ever developing boards in a variety of arenas, and corporations have resultantly evolved in terms of their willingness to embrace board portals-not only because of the

convenience they provide but also because they offer security, provide cost, labor and time savings, and are a greener alternative to paper-based books—interesting corporations who are increasingly aiming to be socially responsible.

I also believe it is necessary for corporations to consider evaluative methods in the POA they adopt in order to ensure they can deal with future developments efficiently and effectively, in the recognition that board governance processes are long term challenges in which the journey of improvement never ends. Evaluation processes have become common in the boardroom, with 94% of S&P 500 companies regularly conducting governance evaluations. Directors, executives and leaders of listed corporations are thus aware that the continued success of their corporation depends on finding the right corporate governance practices that best meet their corporations needs and the expectations of their investors. It gives investors the confidence in the value proposition of their corporation over the long haul which will attract investors who are prepared to pay a premium for the shares of corporations with the right corporate governance. With the approach to end the debate of duality arguably defined, it is important to ensure there is a process in place for continual evaluation to ensure the approach adopted by corporations remains relevant, appropriate, correctly implemented and effective in continuing to enhance corporate governance, given the ever changing economic and political environments, risks posed and market environments. I believe appropriate methods of appraisal would involve considering the views of outsiders of the boards, whether this be involving shareholders in annual general meetings requesting a vote on practices, or engaging external consultants as corporations are now more commonly relying upon.

5 Conclusions

With the lack of an evident relationship between board leadership structure and firm performance in empirics, in theory and in practice, the debate of duality exhibits a “level of consistency

200 PwC, “Annual Corporate Directors Study” (2011)


unusual in any literature\textsuperscript{203} and has continued to rage through inertia for over twenty years. Having considered and questioned the same, it would be easy to assert that the debate of duality can only progress in this manner. However, with the aim of achieving optimal corporate governance practice I have proceeded to find a way to end the debate of duality to benefit current corporate practice in listed corporations on an international scale.

The discussions and deliberations present in my thesis have allowed me to conclude that the conventional structural approach towards the debate of duality has led to the inability of the debate of duality ending for over twenty years, which is supported by inconclusive theory and empirics. Despite such findings the debate has continued to rage and has remained a highly contentious, international issue. Having considered the progression of the literature and empirical research studies, I have advocated that progressing with the structural approach towards the debate through inertia makes an ultimate determination and conclusion of the debate arguably impossible due to dichotomy. However, in acknowledgement of the holistic importance and necessity of effective corporate governance practices being established and practiced in international corporations I have pursued with the agenda of ending the debate. Upon consideration of the contentious issues surrounding the practice, I was able to attribute a common, underlying cause which is encompassed in all arguments raised in the debate-sought by proponents and opponents of duality alike, which has been acting as the motivating factor causing continued contention which has constantly enraged the debate-found to be the boards lack of informational autonomy, leading to CEO reliance which effects the boards ability to monitor the CEO and guide the corporation which the board is assembled to do for the sake of effective corporate governance and corporate performance. Acknowledging that such issues can not be appropriately solved by focussing on board structure and structural reform, this has enabled me to advocate for a different approach to be taken to induce finality, the POA. I have advocated that the POA of adopting board portals is the reform which can end the duality debate. The implementation of a portal in a more enhanced, continual and reciprocal manner than as currently implemented in some corporations at present has the ability to adapt to corporate specific needs and situations, but more importantly enables the underlying contention behind the

\textsuperscript{203} Krause, Semedeni, CEO-Coard Chair Separation: If It Aint Broke, Dont fix it (Conference Board Director Notes 2013)
debate of duality and the issues surrounding the discourse to be overcome which ultimately ends the debate. However, the ability of the debate of duality to end, and benefits of effective governance to flow, now rests in the hands of regulators and stock exchanges to implement such a disclosure based requirement as advocated, with investors to demand this specific, modern and technical POA, and with corporations to ensure effective execution and existence of the approach—which continual self assessment and evaluation of the system will help to enable.
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