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FOREWORD

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This Foreword introduces a new partnership, between the *Journal of Law & Business* and the NYU School of Law's Institute for Corporate Governance and Finance (ICGF), focused on insights from key players at the important intersection of business and law. In keeping with NYU's long tradition in this area, the Institute will host a distinguished jurist or lawmaker for a lecture to the NYU community including students, faculty, alumni, and the ICGF board and friends. The *Journal* will publish the remarks for reflection by the bar and bench alike, preceded by a *Foreword* putting the lecture in context. In launching our new project, we are particularly privileged to feature the insights of Delaware's Chief Justice, Collins J. Seitz, Jr.

The *Journal of Law & Business* is one of NYU School of Law's most innovative academic journals, providing a forum for dialogue and analysis of current issues, ideas, and problems at the intersection of law and business. The *Journal* aims to contribute to both academic and professional debates at the center of our markets, publishing work from both professors and practitioners. And so the *Journal* often publishes pieces analyzing corporate law developments in the Na-

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tion's most renowned corporate-law courts: the Delaware judiciary.<sup>1</sup>

The Institute for Corporate Governance & Finance was founded by NYU Law Professor Edward Rock in 2017 to convene conversations among leaders in law and finance in New York to identify and debate the issues that will define the future of law and business.<sup>2</sup> During the Institute's first public program, in 2017, NYU Law graduate Martin Lipton unveiled his *New Paradigm for Corporate Governance*, with commentary from Delaware's Chief Justice, Leo Strine, Robert Schumer of Paul, Weiss, and Matthew Mallow of Blackrock. The debate that followed focused on the complex ecosystem in which activist shareholders, institutional investors, and firms do their work.<sup>3</sup>

The NYU School of Law's deep connection with the Delaware judiciary builds upon the work of William Allen, our late, beloved NYU colleague, who served as Chancellor of Delaware's Court of Chancery from 1985 through 1997 and who will forever be remembered for his landmark contributions to the Nation's business law.<sup>4</sup> After leaving the bench, Chancellor

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1. See, e.g., Mary Siegel, *Going Private: Three Doctrines Gone Astray*, 4 N.Y.U. J.L. & Bus. 399 (2008) (analyzing Delaware doctrine on going-private transactions); Matteo Gatti, *Did Delaware Really Kill Corporate Law? Shareholder Protection in A Post-Corwin World*, 16 N.Y.U. J.L. & Bus. 345 (2020) (assessing *Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304 (Del. 2015)); Mark Lebovitch & Laura Gundersheim, "Novel Issues" or A Return to Core Principles? Analyzing the Common Link Between the Delaware Chancery Court's Recent Rulings in *Option Backdating and Transactional Cases*, 4 N.Y.U. J.L. & Bus. 505 (2008).

2. *Institute for Corporate Governance & Finance*, NYU SCHOOL OF LAW, <https://www.law.nyu.edu/centers/icgf> (last visited Apr. 17, 2023).

3. NYU School of Law, *A New Paradigm for Corporate Governance?*, YOUTUBE (Mar. 9, 2017), [https://www.youtube.com/watch?v=ezm\\_WsFrgzk](https://www.youtube.com/watch?v=ezm_WsFrgzk); see also Martin Lipton, *Corporate Governance: The New Paradigm*, HARVARD L. SCH. FORUM ON CORP. GOVERNANCE (Jan. 11, 2017), <https://corpgov.law.harvard.edu/2017/01/11/corporate-governance-the-new-paradigm>; Edward Rock, *For Whom is the Corporation Managed in 2020? The Debate Over Corporate Purpose*, 76 BUS. LAW. 363 (2021).

4. The Chancellor issued more than 500 judicial opinions, including several seminal decisions that today guide corporate directors in boardrooms—as well as law students and practitioners alike—in determining when directors' decisions deserve deference. *Gagliardi v. Trifoods Int'l*, 683 A.2d 1049, 1052 (Del. Ch. 1996) (providing the canonical argument that diversified "[s]hareholders don't want (or shouldn't rationally want) directors to be risk averse . . . . But directors will tend to deviate from this rational acceptance of corporate risk if in authorizing the corporation to undertake a

Allen became the founding Director of NYU's Pollack Center for Law and Business. That connection continues: Just this year, students had the opportunity to take classes with both Lori W. Will and Travis Laster, Vice Chancellors of the Delaware Court of Chancery.<sup>5</sup>

So it is fitting that the Institute so often hosts lectures from leading Delaware jurists. In 2018, former Chief Justice Leo Strine came to NYU to identify what he famously called the "fiduciary blind spot": the illegitimate use of working Americans' savings for corporate political spending.<sup>6</sup> The next year, Chancellor Andre Bouchard visited NYU Law to share his view on two recent cases, *Corwin v. KKR Financial Holdings*<sup>7</sup> and *In re Trulia, Inc. Stockholder Litigation*<sup>8</sup> and the corporate-law progeny each decision produced.<sup>9</sup> Both lectures commanded the attention of decisionmakers in legislatures and boardrooms alike, reflecting as they did the most pressing questions facing corporate boards around the world.

This year's lecture, by Delaware Chief Justice Seitz, is no less impactful. In the pages that follow, the Chief Justice challenges us to consider the institutional importance—and, really, the meaning—of being an independent director in the modern corporation. As the Chief Justice reminds us, Delaware law and its judiciary rely on the independence of counsel and directors to do its important work. Like the lectures that

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risky investment, the directors must assume some degree of personal risk relating to *ex post facto* claims of derivative liability for any resulting corporate loss").

5. See Corporate and M&A Litigation: A Delaware Law Primer, NYU LAW, <https://its.law.nyu.edu/courses/description.cfm?id=31351> (last visited Apr. 21, 2023) (describing course taught by Lori W. Will); Iconic Delaware Cases Seminar, NYU LAW, <https://its.law.nyu.edu/courses/description.cfm?id=32472> (last visited Apr. 21, 2023) (describing course taught by Travis Laster).

6. Leo E. Strine, Jr. *Fiduciary Blind Spot: The Failure of Institutional Investors to Prevent the Illegitimate Use of Working Americans' Savings for Corporate Political Spending*, 97 WASH. U. L. REV. 1007 (2020); Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83 (2010).

7. *In re KKR Fin. Holdings LLC S'holder Litig.*, 101 A.3d 980 (Del. Ch. 2014).

8. *In re Trulia, Inc. S'holder Litig.*, 129 A.3d 884 (Del. Ch. 2016).

9. NYU School of Law, *2019 Distinguished Jurist Lecture: Chancellor Andre Bouchard*, YOUTUBE (Nov. 13, 2019), <https://www.youtube.com/watch?v=YLO2knjEM5E>.

preceded it—and those that will follow—we expect that the lessons from the Chief Justice’s remarks will point the way forward for corporate-law practitioners, scholars, and students alike.