The Modernization of Corporate Governance: Blockchain as a solution?

Anne Lafarre, 24-25 January 2019
1. Introduction to Corporate Governance and Corporate Law
2. The Agency Theory and Blockchain
3. Firms Traded on Blockchains
4. Special Focus: a Blockchain-Based AGM?
5. Food for Thought
Five fundamental characteristics of corporations all around the world:

- Legal personality
- Limited liability
- Transferability of shares
- Investor ownership
- Delegated management

> Agency problem

“The directors of such companies, however, being the managers rather of other people’s money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master’s honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.”
Agency Theory and Corporate Governance

• Which governance structure can best (most efficiently) deal with the agency problem?
• Governance problem: tradeoff between benefits and costs of delegation.
• Jensen and Meckling (1976): there is always a residual loss.

Other agency problems:
• Second: small shareholders and blockholders
• Third: stakeholders and shareholders
Key question:

Can agency costs ever be fully removed?
Blockchain Technology
The DAO

• ‘Decentralized Autonomous Organisation’
• The DAO (Slock.it): investment fund
• It got ‘hacked’
“The lack of centralized authority needed to make quick decisions was felt strongly throughout the history of DAO. This is however the nature of decentralized systems, and is both a blessing and a curse. This is exemplified by the fact that even little posts by Vitalik were interpreted as decisions, even though he just gave his opinion.”

Share Trading: Several Initiatives

Blockchain Technology Set To Revolutionize Global Stock Trading

CHESS Replacement
ASX is replacing CHESS with distributed ledger technology (DLT) developed by Digital Asset

A Bitcoin Technology Gets Nasdaq Test
Pilot to take place in fledgling Nasdaq Private Market
AGMs: important in corporate law theory

- In practice: *often ‘Dull Mandatory Rituals’.*
- Complex systems and mistakes;

  Vice-Chancellor Laster Keynote Speech Council of Institutional Investors, Chicago September 29, 2016:

  “I want you to become plumbers. You need to fix the proxy plumbing.”
Complex Systems and Mistakes

- Chain of intermediaries
- ‘share immobilization’

  - *DTC and Cede & Company (subsidiaries)*
  - Other parties, including Broadridge, ISS, etc.
T. Rowe Price Voted for the Dell Buyout by Accident

The system for tracking share ownership and control is so tangled it's easy to overlook a mistake.

P&G Climbs After Peltz Scores Surprise Board Victory in Recount
Yahoo Recount Shows Large Protest: Yang’s Approval At 66, Not 85 Percent

‘In the chain of intermediaries, especially when the chain involves many intermediaries, information is not always passed from the company to its shareholders and shareholders’ votes are not always correctly transmitted to the company. This Directive aims to improve the transmission of information along the chain of intermediaries to facilitate the exercise of shareholder rights.’
Implementing Regulation (EU) 2018/1212:

‘In order to facilitate the exercise of shareholders rights and make it more efficient, particularly across borders, the use of modern technologies in communication between issuers and their shareholders and by intermediaries, including other service providers which are deployed for these processes, should be encouraged.’

Laster:

“A superior external solution comes in the form of technological opportunity. Distributed ledger technologies can provide better accuracy, greater transparency, and superior efficiency for settling securities trades and voting in corporate elections.”
Blockchain offers:

- Actions governed by smart contracts
- Proxy voting: end-to-end confirmation (verifiability)

*Not completely decentral: still at least one intermediary (‘Permissioner’)*
Blockchain AGM

1. Meeting Initialization and Notification
2. Ownership Record Loading
3. Voting Right Allocation
4. Voting Party Authentication
5. Proxy Assignment
6. Voting
7. Meeting Management
8. Post-Meeting Actions

Process Flow of the CSD Working Group on DLT
Source: Adapted from the table on p.10 of the CSD Working Group on DLT report, using information from pp. 9-17 of this report.
Proxy Voting Is the Latest Target For Blockchain Disruption

By Lily Katz
May 10, 2018, 2:00 PM GMT+2

Broadridge Financial Solutions Inc., a provider of trade-processing technology, has been granted a U.S. patent for distributed-ledger technology that could improve the processes for proxy voting and repurchase agreements.

Other Initiatives

- TMX Group
- AST Financial
- Delaware Blockchain Initiative
- Banco Santander
- KAS Bank
- Estonian Government
- SWIFT
- CSDs
- IBM
- ASX
- …
Decharge van de Raad van Bestuur

Voorgesteld wordt om, in verband met de jaarrekening 2017 en hetgeen daaromtrent in de Algemene Vergadering van Aandeelhouders aan de orde is gekomen, decharge te verlenen aan de leden van de Raad van Bestuur voor hun bestuur in het afgelopen boekjaar.

Options:
- VOOR
- TEGEN
- ONTHOUDING

Download
Discussie
Email
If needed:

Who will be ‘the permissioner’ (gatekeeper)? (Governance of the Blockchain).
Getting rid of the annual characteristic?

Fully virtual ‘platforms’?
Thank you for your attention!

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