

ERRATA

Volume 2008, Number 3, of the *Columbia Business Law Review* contained three errors. First, on pages 934-35, the table of contents for the article entitled *Mutual Fund Investors: Divergent Profiles* was numbered incorrectly. Second, on page 1021, the biographical note for author James Carlson was inaccurate. Third, on page 1111, the biographical note for author Blake Smith was also inaccurate. A corrected version of the affected pages follows. The editors apologize for the error.

MUTUAL FUND INVESTORS: DIVERGENT PROFILES

Alan R. Palmiter & Ahmed E. Taha*

I.	Introduction	937
II.	The Mutual Fund Market	940
III.	Industry's Portrait of Fund Investors: Sophisticated and Informed	945
	A. ICI Survey of (Some) Fund Investors	946
	1. Survey Findings	947
	2. Summary and Analysis	948
	B. ICI Statements Regarding Fund Investors	948
	1. Investors Are Sensitive to Fund Costs	949
	2. Investors Access Large Amounts of Fund Information	952
	3. Summary and Analysis	956
IV.	SEC's Portrait of Fund Investors: Capable (With Some Help)	956
	A. SEC Regulation of Fund Disclosure	957
	1. Streamlined Disclosure	958
	2. Standardized Disclosure	964
	3. Plain English Disclosure	967
	4. Summary and Analysis	968
	B. SEC Regulation of Fund Advertising	968
	1. Required Warnings	968
	2. Standardized Performance Data	970
	3. Summary and Analysis	970
	C. SEC Efforts to Educate Investors	971
	1. Warnings About Past Performance	971
	2. Warnings About Fees and Expenses	972
	3. Summary and Analysis	974
V.	Academic Literature's Profile of Fund Investors: Mostly Clueless	974

* Professors of Law, Wake Forest University School of Law. The authors thank Andrew Heiden ('09), Clay Scheffel ('09), and Bue McNeally ('10) for their research assistance. We also appreciate comments by participants at the Law & Markets Workshop at Duke Law School.

A.	Investors Are Ignorant of Basic Fund Characteristics	975
B.	Investors Are Inattentive To Risk	978
1.	Indifference to Risk Measures	978
2.	Only Weak Reliance on Risk Ratings	979
3.	Summary and Analysis	980
C.	Investors Pay Insufficient Attention to Fees and Expenses	980
1.	Surveys of Fund Investors	981
2.	Other Studies of Investor Behavior	982
3.	Evidence from Index Funds	985
4.	Summary and Analysis	989
D.	Investors Increasingly Pay Attention to Loads..	990
1.	Studies of Loads.....	990
2.	Studies of 12b-1 Fees.....	992
3.	Summary and Analysis	993
E.	Investors Chase Past Returns.....	994
1.	Investor Surveys and Experiments	994
2.	Other Studies of Investor Behavior.....	995
3.	Summary and Analysis	997
F.	Financial Advisers Provide Little Help	998
1.	Widespread Use of Financial Advisers.....	998
2.	Survey of Financial Advisers	999
3.	Advisers' Effects on Investor Behavior.....	1000
4.	Summary and Analysis	1003
G.	Advertising Does Not Benefit Investors	1003
1.	Importance of Advertising to Investors.....	1003
2.	Benefits and Harms of Advertising	1004
3.	Summary and Analysis	1007
VI.	Fixing a Dysfunctional Market	1008
A.	Facilitating Investor Access to Important Fund Information	1008
B.	Inducing Investors to Pay Greater Attention to Fund Expenses.....	1010
C.	Encouraging Investors to Pay Less Attention to Past Performance	1013
D.	Having the SEC Pay Attention to the Academic Literature	1014
VII.	Conclusion	1018

TO ASSIGN, OR NOT TO ASSIGN: RETHINKING ASSIGNEE LIABILITY AS A SOLUTION TO THE SUBPRIME MORTGAGE CRISIS

James Carlson*

I.	Introduction	1022
II.	Background	1025
	A. Subprime Lending	1025
	B. Securitization	1030
III.	Current Legal Landscape	1034
	A. Federal Solutions: The Weak Federal Approach	1037
	B. State Solutions: The Problem of Regulatory Capture	1038
IV.	Conceptualizing Assignee Liability	1040
	A. The Costs and Uncertainties of Due Diligence Review	1042
	B. Requiring Solvency: Practical and Legal Obstacles	1043
	C. Litigation Barriers: Assignee Liability and Obstacles to Enforcement	1046
V.	Empirical Analysis of Assignee Liability	1048
	A. A Note on the Data	1049
	B. Past Empirical Research	1050
	C. Contributions to the Empirical Study	1052
	1. Propensity Score Matching	1052
	2. Using Rate Spread Instead of Subprime Lender List	1055
	3. Comparing Assignee Liability Provisions ...	1056
	4. State-Specific Focus	1057

* J.D. Candidate 2009, Columbia University School of Law; B.A. Economics and History 2006, Case Western Reserve University. The author wishes to thank Professor Ronald Mann for his guidance, and the staff of the *Columbia Business Law Review* for its editing assistance.

D. Theoretical Models.....	1059
E. Results.....	1060
1. Full Sample.....	1060
a. Rate Spread: Interest Rate on Subprime Loans	1060
2. High Cost: Probability of Originating a High Cost Loan	1062
3. State Sample: Probability of Securitization	1064
F. Discussion	1064
VI. The Great Misconceptualization of Subprime Lending	1065
VII. Conclusion	1068

I. INTRODUCTION

No city better epitomizes the subprime crisis than Cleveland. In 2006, the Census Bureau declared Cleveland the poorest big city in America—with 32% of its population living below the poverty level.¹ Expectedly, nearly 30% of loans originating in the Cleveland region during this time were subprime, many undoubtedly on predatory terms.² When the subprime crash engulfed the region, nearly 24,000 people lost their homes, leaving 10,000 abandoned buildings.³ By contrast, one of the more devastated regions of New Orleans, in the wake of Hurricane Katrina, lost about 13,700 homes.⁴

The mortgage foreclosure crisis and subprime meltdown hardly needs further introduction. From 1994 to 2006, the value of all subprime loans increased from \$30 billion to \$640 billion.⁵ In 2007, subprime loans plummeted to \$50 billion,

¹ Thomas Ott, *Real Estate's Perfect Storm*, CLEVELAND PLAIN DEALER, Jan. 20, 2008, at A1.

² *See id.*

³ *Id.*

⁴ *Id.*

⁵ *See* Ted Frank, *Prime Target*, WALL ST. J., Apr. 25, 2007, at A15.

PROXY ACCESS AND THE INTERNET AGE: USING ELECTRONIC SHAREHOLDER FORUMS TO IMPROVE CORPORATE GOVERNANCE

Blake Smith*

I.	Introduction	1112
II.	Legal Developments Concerning Shareholder Proxy Access	1113
	A. Shareholder Proxy Access	1113
	B. AFSCME v. AIG.....	1114
	C. The SEC Responds to the AIG Decision	1116
	D. Debate over the Merits of Proxy Access	1117
III.	Development and Use of Electronic Shareholder Forums	1121
	A. Previous Experience and Commentary on Electronic Shareholder Forums	1124
	1. Open Forums and Investor Message Boards.....	1124
	2. Independently Conducted, Shareholder Sponsored Forums	1125
	3. Corporate Instituted Electronic Forums	1128
	4. Opposition to Shareholder Forums	1129
	5. Proponents of Shareholder Forums	1130
IV.	Shareholder Participation in Corporate Governance through Electronic Forums	1131
	A. Introducing Electronic Forums Into The Proxy Access Debate.....	1132
	1. Waste and Disruption	1132
	2. Empowering Special Interests	1134
	3. Short-Termism.....	1135
	4. Impact on Recruiting Directors	1136

* J.D. Candidate 2009, Columbia University School of Law; B.A. English, Pomona College. The author wishes to thank his family, Professor Harvey Goldschmid for his guidance, and the staff of the *Columbia Business Law Review* for its editing assistance.

5. Effective Shareholder Participation in Corporate Elections	1138
6. An Overview of the Shareholder Franchise in Electronic Forums	1139
B. General Forum Use	1140
V. Conclusion	1141

I. INTRODUCTION

On November 28, 2007, the SEC voted to amend federal proxy rules in two ways. The first amendment clarified the SEC's stance that corporations may exclude shareholder proposals for nominees to the company's board of directors from the company's proxy materials. The second amendment was designed to encourage the use of electronic communications between companies and investors. These SEC actions constituted a partial response to a longstanding debate concerning the role of shareholders in corporate governance.

This Note argues that innovative uses of web-based technology could resolve many contentious issues concerning shareholder participation in corporate elections and ultimately improve the quality of corporate board elections from the perspective of corporate boards and shareholders. Despite their early state of development, electronic shareholder forums present corporations with the clear opportunity for low-cost, beneficial interaction with shareholders. Web-based technology can be molded to fit a company's individual needs. With a proper investment of time and due consideration, electronic communications with shareholders stand to improve corporate performance without dramatically altering structures of corporate governance.

Part II of this Note reviews the legal developments and academic debate concerning the merits of shareholder participation in corporate elections from the angle of shareholder access to corporate proxy materials. Part III traces the development and use of electronic shareholder