FOCUS ON

CORPORATE GOVERNANCE

With fund governance continuing to be a dominant theme within the hedge fund industry, *HFMWeek* talks to Peter Huber, of Maples Fiduciary Services, to discuss the latest issues and concerns

Peter Huber, global co-head of Maples Fiduciary Services, has extensive experience in both the onshore and offshore financial services industry. He serves as director to offshore hedge funds and investment management companies. Peter was previously director and chief investment officer of Close Asset Management (Cayman). Prior to that, Peter was a partner and director of a Canadian investment management firm, Lighthouse Private Client Corp.

Increasing demand for a higher standard of fund governance does not appear to be going away any time soon. Calls from institutional investors for independent and capped directorships have been heard and led to regulators taking a proactive stance on this thorny issue. To find out more about corporate governance in the hedge fund industry, *HFMWeek* spoke with Peter Huber, global co-head of Maples Fiduciary Services.

HFMWEEK (HFM): HOW HAVE THE CALLS FOR A HIGHER STANDARD OF FUND GOVERNANCE SINCE THE EVENTS OF 2008 BEEN MET? ARE FUND CENTRES BEING PROACTIVE ENOUGH IN MEETING THESE DEMANDS?

PETER HUBER (PH): I think the majority of fiduciaries have stepped up their game to address the demands for stronger governance. In 2008, the Cayman Islands Directors Association was formed to promote better governance standards and create a code of conduct and best practice for its members to ensure that the highest standards of corporate governance are maintained. The Cayman Islands Monetary Authority (Cima) is currently completing its own industry consultation process on corporate governance and I expect that new rules concerning directors and their duties will be the result. Changes are happening in the industry, perhaps not as quickly as some would wish, but the important thing is that the right balance is struck and that takes time. I am confident that Cima, after completing its consultation review, will create a framework that works for all industry stakeholders.

HFM: IS THERE A DISPARITY BETWEEN THE STANDARD OF FUND GOVERNANCE BETWEEN OFFSHORE AND ONSHORE DOMICILES? IF SO, WHAT STEPS SHOULD BE TAKEN TO CLOSE THIS GAP?

PH: The root cause of the disparity in fund governance practices in the US compared to other jurisdictions is the use of partnerships in the US compared to the use of corporate vehicles for funds created in Cayman and in Europe. The historical practice for most funds in the US has been that the investment manager retains control of the entity that acts as general partner to the limited partnerships in the structure. This is different, or asymmetrical, to the approach taken in Cayman and in Europe where they use corporate vehicles and have independent boards of directors controlling the fund.

With the US general partner often fulfilling several key roles in the structure, creating an independent board at the general partner level is often problematic. A potential solution is the use of governance committees that are appointed by the general partner. The governance committees would be a contractual appointment and would be delegated many of the roles and responsibilities typically undertaken by a Cayman corporate feeder fund board. To gain efficiencies, the same individuals that serve on the Cayman corporate feeder fund can comprise the governance committees. The result is that the entire fund structure, the Cayman funds along with the US funds in the structure, will have a consistent framework for independent oversight, while at the same time, allowing the investment manager to control the general partner for other corporate purposes.

HFM: HOW IMPORTANT IS IT FOR A FUND AND ITS INVESTORS TO HAVE AN INDEPENDENT DIRECTOR ON THE BOARD?

PH: It is very important to have independent directors on a fund board, especially in times of crisis. In the normal course, conflicts of interest are rare. However when conflicts do arise, such as when a fund is required to consider suspending or gating of redemptions, making changes to the offering memorandum or when reviewing side letters, an independent board serves a useful and meaningful purpose in protecting investor interests. An independent board is also important to ensure that all service providers to the fund, including the investment manager, are abiding by the terms of their service agreements.

HFM: DO YOU BELIEVE IT'S NECESSARY TO CAP THE NUMBER OF DIRECTORSHIPS AN INDIVIDUAL HOLDS?

PH: One individual can, of course, have too many directorship appointments. However, forcing a cap on directorships would be problematic, as no two funds or fund structures are alike. Some funds require a larger than average amount of director time but others require less time. For someone who is a part-time director with other outside interests, capacity for that person would be entirely different to a full time professional director. A director offering his or her services through a professional services firm with full time support personnel is likely to have more capacity than an individual who provides his or her service from home or a small office.

I do think the director cap point would become a non-issue if it became market practice for professional

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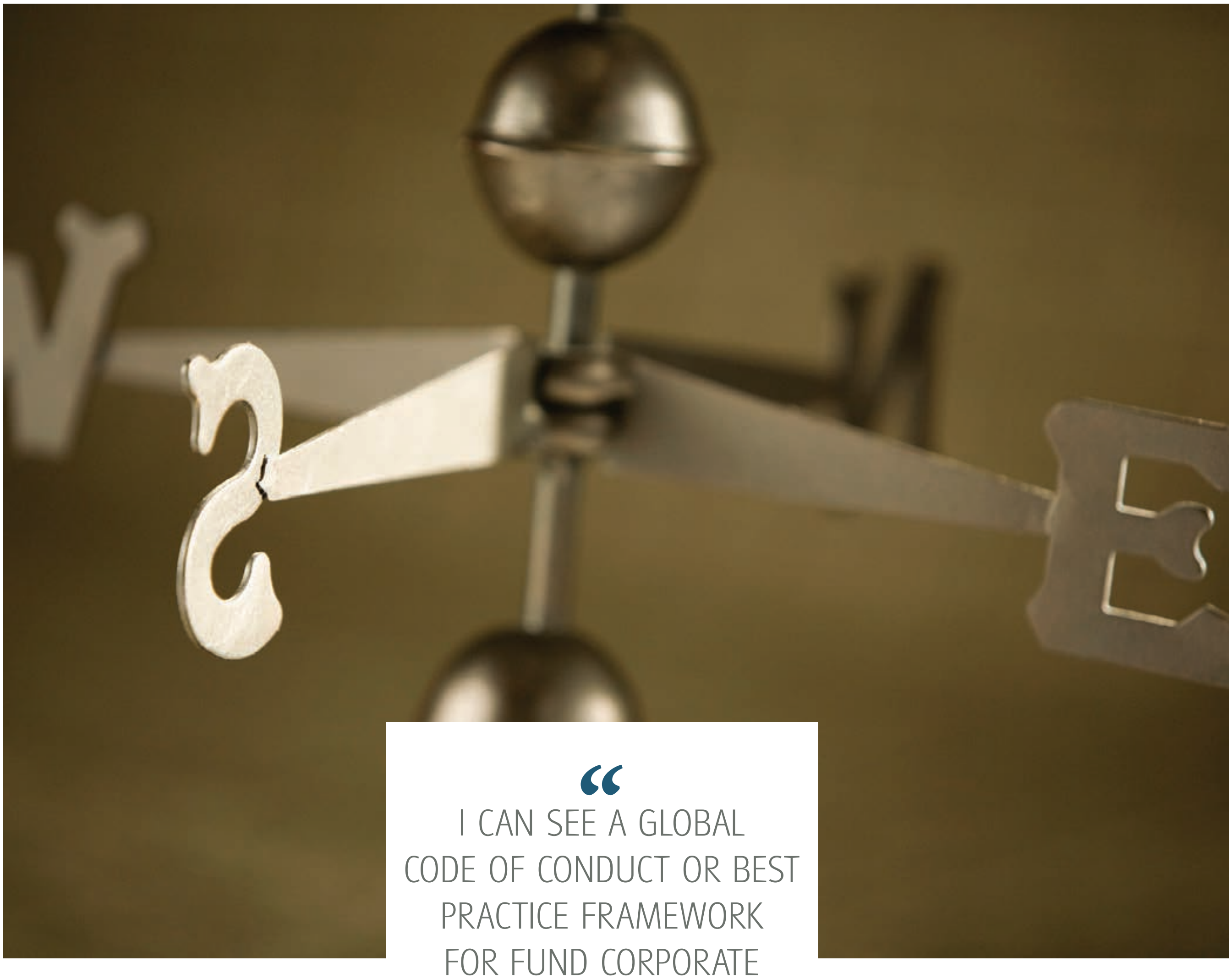

directors to be fully transparent on the number of manager relationships and fund directorships they hold. If stakeholders knew those numbers and were able to discuss with that fund director how he or she is able to manage capacity, investors and stakeholders would then be able to make up their own minds as to whether it was appropriate to use the services of that particular director.

"I CAN SEE A GLOBAL CODE OF CONDUCT OR BEST PRACTICE FRAMEWORK FOR FUND CORPORATE GOVERNANCE EMERGING OVER TIME. WE ARE HEADING IN THE RIGHT DIRECTION"

HFM: TO WHAT EXTENT IS THE MIX/RANGE OF BACKGROUNDS AND PROFESSIONS OF A FUND'S DIRECTORS IMPORTANT? WHAT REPRESENTATION SHOULD BE PURSUED/AVOIDED?

PH: The adage, "from diversity, comes strength" can certainly be used in the context of an investment fund board. Funds, their structures, more regulation and increasingly esoteric investment strategies make it very difficult for one individual to possess the technical skills to cover every issue that is presented to a fund. Aside from a fund director having the appropriate background and experience, typically gained through years of involvement in the funds industry, the next best thing one can have is a board with diverse backgrounds. I have an asset management and audit background. My favourite board composition is to have someone with fund administration and/or a funds legal background, which complements my skills nicely. It is always good to have a representative from the investment manager serve on the board as well.

HFM: WHAT DOES THE FUTURE HOLD FOR CORPORATE GOVERNANCE AND WHAT CHANGES CAN WE EXPECT OVER THE NEXT 12 MONTHS?

PH: Increased regulation in the US, Europe and offshore – Fatca, AIFMD, the new CFTC rules for example – will make the role of a fund director more demanding and directors will need to ensure they keep up with these regulations. Director decisions and contributions will, especially in times of crisis, be evaluated with greater scrutiny. The industry has come a long way from the early days of retired bankers and accountants serving multiple boards and not adding much value.

The dialogue between investors, regulators, consultants, managers and the fiduciary community is a positive step and it is reasonable to expect that fund governance will become more consistent across jurisdictions. I can see a global code of conduct or best practice framework for fund corporate governance emerging over time. We are heading in the right direction. ■