TURNER:: Hello, and welcome to the inaugural edition of our Wisconsin Law In Action, a podcast where we discuss new and forthcoming scholarship with University of Wisconsin Law School professors.

TURNER:: I'm your host Kris Turner, and my guest today is professor Yaron Nili, author of the new article Successor CEOs. Thank you for joining me professor Nili.

PROF. NILI:: Thank you for having me. I'm excited to talk about my project and launch this podcast. It's exciting.

TURNER:: Yes. This should be the first in a series of great podcasts and thanks again for joining us. Let's go ahead and get right into it. Tell us about your research interests and work in general.

PROF. NILI:: Yeah. So I do very broadly I work on corporate governance, how corporations are managed and governed, but more specifically I think I have two strengths of work. One is focused really on the board, the board of directors the [inaudible 00:01:02] of the corporation is supposed to manage and direct it. And the other one is more focused on shareholder voting and shareholder engagement with companies. The product I'm going to talk to you guys about today is on the first strand, the one that goes over the board, and I have other work also at both compositions and the diversity and other research organization directors. And that's a run that is becoming increasingly important in today's landscape and I'm excited to talk about this specific project and also about some future research I have in the pipeline.

TURNER:: Great. Thank you again for coming. So what drew you to explore this topic specifically?

PROF. NILI:: Yeah. So interesting enough, so I've been looking at various issues related to director independence and board independence, and as I was working on different project one of the topics that investors seem to put a lot of emphasis into was the separation of the CEO chair of the board roles, and that's something that has become increasingly more important to investors, they talk about it. A lot of companies have moved and separated those worlds and I was curious to see exactly how that process is transpired and what are the outcomes, and as I was looking at the data I've kind of noticed an interesting anecdotal example of something that surprised me. And then I decide to dig a little bit deeper and the results we leak of product paper, it wasn't the case where I have the idea and then the paper came. It was kind of like the results were of really kind of exploration of that specific topic.

TURNER:: What kind of challenges or surprises did you encounter during the research or during the writing process?

PROF. NILI:: Yeah. So that's exactly what I was leading to. So I think the data has surprised me in the sense of... so the key finding of what's the key, maybe the key observation of this project is that when we talk about separation of CEO and chair I think most people, both in academia and in practice, tend to think about it as a way where you have a very powerful CEO that also holds the chair position, think about [inaudible 00:03:12], and then at some point investors are pushing the company to separate the roles. So the CEO has to give up the position of the chair person of the board and they are bringing somebody else [inaudible 00:03:25] independent director to serve as the chairman or chairwoman of the board and the CEO stays in this place. And this is kind of a traditional way to think about how separation of CEO and chair.

PROF. NILI:: So as far as what I found is that actually in many cases it's a little bit reversed. So instead of giving up the chair position, there are cases where the CEO actually gives the CEO position and remains as the chair of the board and brings a successful CEO to take her place. So one of the examples I talk about in my research of Chipotle for instance. So I stood in [inaudible 00:04:01], who was the founder and CEO of Chipotle was also the chair person of the board. And after the company start to struggle a bit, he vacated the CEO position but remain as the chairman of the board, and both an executive from Taco Bell, [inaudible 00:04:16] to run the company for him.

PROF. NILI:: So that's what I'm talking about with the successful [inaudible 00:04:19], where we basically have separation of the roles but not in the traditional way we came to think about it.

TURNER:: Interesting. That is pretty surprising that it's not the way you would normally think of that kind of thing.

PROF. NILI:: Yeah, exactly.

TURNER:: So would that be one of the key takeaways from this project, and what are some of the other ones?

PROF. NILI:: Yeah. So once we observe this type of channel, and it's not like the majority of cases but it's a significant number of cases I think. In the paper I talk about 2016, roughly 217 companies in the S&P 1500 had that structure where the CEO departed his position as CEO and remain as chair. So it's a relatively significant number of cases. And if that is the case then it raises a lot of questions. So if we are trying to get independence on the board, and you are trying to have this structure where we have an independent director sans of the chairperson and then the CEO and we have this kind of checks and balances inside the boardroom, is that still truly hold when we have this long time CEO that then moves and remains as chair and brings somebody else to serve as CEO? Do we have that monitoring and independence function?

PROF. NILI:: Also from a manager perspective, is the new CEO, the incoming CEO, not afraid to manage the company as she see fit or is she still very much beholding to the person that appointed her as CEO, the departing CEO. So there are questions about both kind of whether this is good from a manager's perspective, and you can see the advantages too. So one of the things that I highlight in the project is often CEOs tend to cling to their seat. They don't want to give it up, even if it's not for the best interest of the company. So if we give them an outlet where they can remain as chairman or chairperson, but give up the CEO position, that might be beneficial to companies, allowing them to bring fresh blood up the pipeline to serve as CEO as well, allowing the structure to stay. And this is particularly important when you have a controlling shareholder who also serves as a CEO.

PROF. NILI:: Think Chipotle for instance with [inaudible 00:06:24]. He's the founder. That allowed him to kind of feel that he's still getting an input on how his company's being run but putting a more seasoned or more contemporary management team to run the company in the day to day operations. The problem is that as I mentioned the independence factor is a concerning, but from what investors want and how it actually may transpire in practice. So if investors are just looking at companies that separated the roles they might miss the fact that in many cases the separation is not what you would expect. So you don't really have an independent chair in place, you actually have a ex CEO who has been in the company for a long time and just now transformed from being a CEO to being a chairperson.

PROF. NILI:: And in reality, and I looked at the data a little bit, companies are actually not... they classify some of their chairpersons are as independent, even though I wouldn't count them as one. So based on the regulations that are currently in place, even if you're CEO of the company for 25 years and then you left the position as CEO and became a chair, after three years as serving as chair you can be found by the company as independent director, and that's something that I view as a problematic development. If companies have a long time executives being defined as independent directors that could be a little bit deceiving or inappropriate [inaudible 00:07:58]. And I looked at the data and there is a big chunk of companies that actually do that. So they have successful CEO structures and they call their CEOs, ex CEOs, chairs as independent directors or independent chair although they served in the company for a long long time.

TURNER:: That's great. It sounds like you made some really unique and powerful, even groundbreaking discoveries while you're doing this research and looking at this data then.

PROF. NILI:: Yeah. That was the hope. What I hope is that both investors will start paying more attention to the actual nuances of how the separation happens. There's two channels, and I think the focus is just on one. My hope is that now that we know about the significance of the second channel investors can expect companies to do better on the disclosure front and also be more aware of the fact that this is something, and I think that's an important takeaway that is a very nuance, I don't think I call, or I have an objection to this route of successful CEO. I think it's a very useful and beneficial route for companies, but just to be aware of its existence, and when it happens we need to push companies to make sure that they have the proper independence on the boardroom to counter the fact that you have this successful CEO structure.

PROF. NILI:: So for instance I talk about the fact that if whoever company where we have an ex CEO serving as the chair and we may want to have more defined responsibilities in power as for the independent directors and the lead independent director, and more specifically to counteract the concerns that we might have about the management skewed-ness of the board.

TURNER:: Great. Well it seems kind of silly to ask this, but now what I know of, what are you going to work on next?

PROF. NILI:: Yeah. So as I said I have a few more project that I'm working on. One of them is still in the context of the board and both composition I'm working on now, director's that serve in multiple companies in the same industry. I call them horizontal directors, and that is very interesting implications, both from the [inaudible 00:10:03] perspective and even more interestingly for me, from an [inaudible 00:10:06] perspective. So that's something that I'm kind of exploring right now and it's not my key of research area but I have found that it's a very project that involves two types of law that don't always interact with each other. And then on the other side ensure their engagement and activities and I have this very interesting project that I am collaborating with a colleague named [inaudible 00:10:32], which the project has the market for both.

PROF. NILI:: And we basically talked about the fact that shareholder voting has developed so much that it created a market force that can discipline management in a way that we haven't really thought about before. So that's more of a theological project that we're also very excited about.

TURNER:: Well, I look forward to hearing more about it, and maybe we'll have you back on the podcast once all those things come out then.

PROF. NILI:: I hope so.

TURNER:: I hope so too. So where can people find out more about your work?

PROF. NILI:: Yeah. So everybody can obviously go to SSRN and find my research there, and also on my faculty webpage. And if you're interested in hearing more about contemporary stuff that is happening you can find me on Twitter. My Twitter handle is ynili, so I look forward to interacting with you on Twitter as well.

TURNER:: Thank you all for joining us on Wisconsin Law-In Action. We've been talking about corporate law with professor Yaron Nili. Thank you again for joining us professor Nili.

PROF. NILI:: Thank you Chris.

TURNER:: Be sure to watch for his new article, Successor CEOs, which just came out earlier this year in the Boston University Law Review. A link to the paper's SSRN page along with professor Nili's Twitter handle will be posted along with this podcast at wilawinaction.law.wisc.edu.

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TURNER:: Thank you for listening, and join us next time as we turn our attention to the world of intellectual property with professor BJ Ard. See you then and happy researching.