

TOP TAKEAWAYS

Investment Fund Boardroom Fiduciary Duties

1. **Transparency & Synergy.** It is important to connect and share information between every part of the fund and management. There must be a synergy between all parties so that information is shared efficiently and effectively.
2. **Due Diligence Defense.** In conducting the valuation of a fund's assets, ensure policies and actions are well-documented. Do not assume people remember or understand the fund's policies and how to appropriately apply them.
3. **Be Consistent.** When faced with a difficult valuation, stick to the fund's valuation procedures. Changing methodologies is a recipe for second-guessing and can lead to concerns regarding fair valuation. At the same time, your valuation should be tested against actual transactions.
4. **Conditional Approval.** In performing your 15(c) duties as a fund director, do not simply accept the numbers and performance of the current adviser. The 15(c) process is there to allow and prompt the Board to ask the tough questions for the purpose of making clear what the Board thinks pertinent to its decision making and what the Board considered but decided not to include (e.g., separate institutional account fees charged by the same adviser). If you do not receive the answers you need, conditionally approve the advisory agreement for a short period time, but not the full year. This will act as a "shot across management's bow."
5. **Guard Against Complacency.** Watch out for boilerplate disclosure in annual/semi-annual reports regarding the narrative of the 15(c) process. Ensure that discussions during the review are adequately reflected in the narrative and that specific and unique information regarding that year's discussion is included.
6. **Get Specific.** In reviewing financial performance, do not just review macro-performance numbers and statistics. Have management show detailed line-by-line performance information instead of just looking at the bottom number. An in-depth review will allow you to ask the important questions.
7. **Follow Up.** If a suggested action is required by management, the SEC or legal counsel, make reminders to follow-up on and ask the status of such corrective action. Do not assume that the corrective action is being carried out appropriately.

For more information on Investment Fund Boardroom Fiduciary Duties, please feel free to contact the moderators directly:

Peter Fetzer
Foley & Lardner LLP
pfetzer@foley.com

Stuart Fross
Foley & Lardner LLP
sfross@foley.com