

TOP TAKEAWAYS

Investment Fund Boardroom Fiduciary Duties

1. **Board Member Selection.** Board selection and membership varies depending upon the maturity of the fund board. New board members are selected by personal contact, while established boards often use search firms.
2. **Board Composition.** Board membership should balance members with experience in the industry (and who understand the investment process), with members who can put themselves in an investor's shoes and bring with them perspectives outside of the industry.
3. **Interaction with Management.** Board members should each be open-minded to proposals from management, yet should require management's proposals to be sufficiently clear such that each board member can completely understand the proposal. If a board member does not completely understand the proposal, the member needs to ask questions until the member understands.
4. **Risk Management.** Risk management and stress testing are the new normal. Management should articulate to the board identified issues and situations that might go wrong on the assumption that, eventually, they will.
5. **CEO Evaluation.** Board dissatisfaction with "CEO" performance is different for funds and not comparable to operating companies. Investors have selected the CEO.
6. **Evaluation of Affiliated Service Provider Agreements.** When directors are approving fees paid to the investment adviser or another affiliate, whether they are advisory fees or other fees, the directors must be certain that they fully understand the services that are being provided to the fund, in order for the directors to be able to properly determine that the fee is reasonable. With regard to advisory fees, directors also need to be careful in assessing whether economies of scale are resulting in excess profits to the investment adviser by evaluating how advances in computing and communication technologies might offset the heightened workload and costs necessary to oversee more assets under management.
7. **Disclosure to Investors.** Directors are responsible for ensuring that investors have the information they need to make informed investment decisions. If directors fail to ensure the information in a fund's offering document is clear to investors, then they can be held liable for such failure.
8. **Use of Pricing Service.** A fund's board has a non-delegable responsibility to determine whether an evaluated price provided by a pricing service, or some other price, constitutes a fair value for a fund's portfolio security. In this regard, directors are required to satisfy themselves that all appropriate factors relevant to the value of securities for which market quotations are not readily available have been considered, and to continuously review the appropriateness of the method used in valuing each issue of security in a fund's portfolio.
9. **Know Your Affiliates.** Boards are tasked with protecting fund investors against fund insiders, or affiliated persons, using fund assets for their own purposes, to the detriment of the fund and its investors. The importance of the board maintaining proper oversight of affiliated persons is underscored by recent guidance of the SEC's Division of Investment Management regarding the issue. So, the board needs to ensure that the fund's compliance policies and procedures ensure proper identification of affiliated persons.

10. **Whistle Blower Policies and Procedures.** Employees of investment advisers and other mutual fund service providers are protected by the anti-retaliation provisions of the Sarbanes-Oxley Act of 2002. In light of this, as part of its ongoing oversight process, boards should reassess the funds' whistleblower policies and procedures and those of the funds' investment adviser. Boards should also ensure that the funds' other service providers also have adequate whistleblower policies and procedures.

**For more information**

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

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