Fiduciary Duty, Principles, and Practices

Directors are Fiduciaries

Under state law, board members are bound by fiduciary duty to the company they serve. Fiduciary Duty consists of three primary elements:

The "duty of care" requires that directors make decisions with due deliberation and with the level of care that an ordinarily prudent person in a like position would exercise under similar circumstances.

The "duty of loyalty" requires that directors act "in the interest of the company." In business companies this has been taken to mean acting in the interests of shareholders.

The "duty of full disclosure" requires that the board inform other board members of all information that is important to their evaluation of the company and its interests. This duty also entails that real and apparent conflicts of interest of directors must be to be disclosed to the Board and that the determination of further action in respect of the conflict by the Board must be followed by the Board member.

Principles and Practices for Directors

- **Be Responsible for the CEO.** Many governance experts consider this role the most important responsibility of the Board. This involves actively participating to: select, monitor and evaluate, assist, direct, motivate and reward the CEO. Establish a constructive alliance with the CEO (and all staff members who interact with the Board.)
- **Conflicts of Interest.** Directors should conduct themselves in an honest and ethical manner and avoid any actual or apparent conflict of interest. A conflict of interest occurs when a director's private interest interferes (or appears to interfere) in any way with the interests of the company. A director should disclose to the Board any conflict of interest, and follow its directives regarding the matter. Directors should help each other recognize the possibility for this to occur and act as colleagues and protectors of the corporate interest when it does or appears to occur. Help by timely completing written disclosures of information requested by the company.
- **Corporate Opportunities.** Directors should not (a) take for themselves personally opportunities that are discovered through the use of company property, information or position; (b) use company property, information, or position for personal gain; or (c) compete with the Company. Directors owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises, including if they must pass on personal benefit.
- **Confidentiality.** Directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the Company or its customers, if disclosed.
- **Fair Dealing.** Directors should deal fairly with the company's various constituents. No director should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practice.
- **Protection and Proper use of Company Assets.** Directors should protect the company's assets and ensure their efficient use. All company assets should be used for legitimate corporate purposes.

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- **Compliance with Laws, Rules and Regulations (including Insider-Trading Laws).** Directors should proactively promote compliance with laws, rules and regulations, including insider trading laws. Insider trading is both unethical and illegal. Transactions between TG and public companies should especially remain confidential if they are material to either TG or the counterparty.
- **Encouraging the Reporting of any Illegal or Unethical Behavior.** Directors should proactively promote ethical behavior. Directors should ensure that the company encourages employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a particular situation. Directors should ensure that the company has an effective means for employees to report violations of laws, rules, regulations or the company's Code of Business Conduct and any suspected violations of ethical or disciplinary rules pertaining to professional employees. Directors should ensure that the company does not allow retaliation for reports made in good faith and that this is policy communicated to all employees. Directors must follow the requirements of laws, regulations and corporate mandates themselves. Tone at the top is highly important.
- **Understand and Document the Board's Review of Charitable Mission and Activities.** Directors should assure the proper use and focus of the company's philanthropy expenditures, including outcomes and consistency with the charitable mission of the company. They should regularly review the giving focus and non-profit mission of the entity itself (subject to applicable law), and make any warranted changes.
- **Fulfill Board's Oversight Responsibilities.** At least a majority of the Board should be "independent" in fact and appearance. Directors should commit to the active, informed and independent oversight of the company's affairs and meet in executive session to have candid discussions. Directors should prepare for Board meetings by reading materials submitted for consideration and asking any questions. Directors should have reasonable access to Executive Management, other key employees, and advisors to the company. This contact should be arranged through the President and CEO where practical, but otherwise based on prior coordination with the Board Chair.
- **Ensure Financial Accountability and Transparency.** Engage and receive reports from independent accountants concerning the financial affairs of the company; work to assure that there is no personal inurement to disqualified persons; understand and approve budgets and all extraordinary financial transaction and transactions with unusual or heightened risks; assure valid internal controls and establish related policies.
- **Review and Approve Compensation for Persons Potentially Subject to Excess Benefit Transaction Excise Taxes.** Working in conjunction with the human resources department, understand who these individuals are and understand the procedures necessary to determine their reasonable compensation with the use of a recognized compensation consultant. It is important to follow established TG process and document the information considered, including any consultant's advice, to create the presumption reasonability.
- **Be Strategy-Driven.** Exceptional Boards devote time to deciding what matters most for the company and continuously working with management to hone the company's direction through strategic thinking. Tie rewards to successful realization of strategy. These practices should align time and resources spent, and also shape meetings, board recruitment and personnel choices. It is reasonable to expect and seek independent thinking, subject to conflict of interest requirements. Being bound by the past for its own sake, or to personal alliances is likely difficult to synch with being strategy-driven. It is also important to promote inquiry, director preparedness for meetings, mutual respect and constructive debate among colleagues. The best strategy comes from the confluence of ideas and information-based, shared decision-making.