

The NED

Independent intelligence on fund director issues

Issue 18 • February 2013

Delaware judge slams 'dummy directors'

A recent bench ruling from Delaware is further evidence of the growing interest in the role and responsibility of independent directors in the US.

On February 6 Chancellor Strine of the Delaware Chancery Court issued a bench ruling addressing the duty of independent directors of Delaware corporations with assets outside the United States. In *re Puda Coal, Inc. Stockholders Litigation*, C.A. No. 6476-CS (Del. Ch. Feb. 6, 2013) the judge said the following:

"Independent directors who step into these situations involving essentially the fiduciary oversight of assets in other parts of the world have a duty not to be dummy directors. I'm not mixing up care in the sense of negligence with loyalty here, in the sense of your duty of loyalty. I'm talking about the loyalty issue of understanding that if the assets are in Russia, if they're in Nigeria, if they're in the Middle East, if they're in China, that you're not going to be able to sit in your home in the US and do a conference call four times a year and discharge your duty of loyalty. That won't cut it."

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FGA launch plans announced

Following the formation of its Executive Committee late last year the Fund Governance Association has announced plans for its further development in 2013. It has been decided that the FGA will be an independent, not for profit association. Its mission is to promote and raise standards of corporate governance of private investment funds.

In 2013 that will be done through a mixture of education, particularly educational efforts aimed at investors, and the promotion of good governance principles, that it hopes will be adopted by the alternative fund industry at large. The FGA will be publishing its principles of fund governance in the next two months.

A substantial part of the FGA's educational effort will be focused on alternative fund investors and managers. The FGA will host...

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ALFI	Maples & Calder
Barclays	Mesirow Financial
Castle Hall	MFSA
Central Bank of Ireland	Moody's
CIDA	MPL
CIMA	New York Times
CISX	Puda Coal
Custom House	SEC
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Director's Chambers	Alberga
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HighWater	USS
Huffington Post	Wilkie Farr & Gallagher
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