The NED Risk and Governance

Independent intelligence on fund governance issues

Issue 74 • October 2017

Full steam ahead

It's full steam ahead for FCA's proposals for independent directors. The feedback that the regulator received to its consultation on this topic shows widespread agreement with the plans it outlined on June 28, which were covered in The NED's July issue.

Investor groups that responded to the FCA's consultation believe the regulator should have gone further: they want the majority of the board to be made up of independents (rather than the current proposal of 25% being independent, with a minimum of two being from this category). The Pensions and Lifetime Savings Association, for example, has asked the FCA to require that the majority of the board should be independent, as is now standard practice in the US.

The feedback from the Financial Inclusion Centre, a consumer rights group, made many of the same points as the Pensions and Lifetime Savings Association. And it added: 'It must be made clear that these directorships are not token positions, and that directors are not there to rubber stamp decisions that benefit the company'.

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Director issues in Carlyle case

Following a six month trial a Guernsey Court has handed down judgment in a legal battle dating back to 2008. The allegations included breaches of fiduciary duty, gross negligence, wrongful trading and breaches of contract. Carlyle Capital Corporation Limited (CCC) was a publicly-listed, closed-ended investment fund based in Guernsey.

Carlyle and seven employees, including co-founder Bill Conway, were sued by liquidators of the Carlyle Capital Corporation (CCC), over their dealings in a fund that was set up in 2007 to invest in mortgage-backed bonds. CCC, which was domiciled in Guernsey, borrowed more than 30 times its capital to buy $22bn worth of bonds. In March 2008 the fund collapsed with more than $1bn of losses.

A lawsuit brought by CCC's liquidators alleged the firm acted irresponsibly and should have started winding down operations many months earlier. But the court ruled that there was no breach of duty or wrongful trading and found in favour of the defendants on every one of the close to 200 individual allegations raised. The liquidators say they may appeal the ruling. Alan Roberts, one of the liquidators, said: 'The judgment is obviously disappointing and an appeal will be carefully considered.

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