

## Corporate Responsibilities for Issue Definition and Information Access

Discussions of the recently reported Forum policies for defining issues relevant to investor decisions<sup>1</sup> have raised questions about what should be expected of corporate managers, not only in the issue definition process itself but also in the related processes of providing information required to consider the issue. Since a subject company's management must be relied upon as the primary source of information,<sup>2</sup> the integrity of issue definition processes – with or without Forum support – will necessarily depend on corporate board responsibilities for “engagement” with investors<sup>3</sup> and for minimizing manipulation by factional investor interests.<sup>4</sup>

Preliminarily, the questions about a corporate board's responsibilities for informed consideration of issues may be summarized as follows:

### 1. Director decisions

Each director has a fiduciary duty to exercise individual judgment about what will be in the best long term interests of the corporation. This duty of independent judgment requires being responsibly informed of investor interests, but does not allow compromising that judgment to accommodate the interests of any factional investor constituency.

*How should boards manage constructive communications with investors to avoid actual or apparent compromises of director duties to the corporation?*

### 2. Investor decisions

Some communications by activists or others seeking support of an issue may confuse or mislead other investors. While a company and its directors may not have any responsibility to control the conduct of an independent investor, it is generally assumed that a company will actively monitor public reports to assure the integrity of information that may be relied upon for investment decisions.

*How should a company's board assure the reliability of investor decision-making information independently of any partisan advocacy or defense of its own positions?*

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<sup>1</sup> See [July 30, 2014 Forum Report: Supporting the Definition of Issues to Be Considered by Investors](#).

<sup>2</sup> See [February 6, 2013 Forum Report: What Sources Should Investors Rely Upon?](#)

<sup>3</sup> See [February 2, 2014 New York Times DealBook: "Unlikely Allies Seek to Check Power of Activist Hedge Funds"](#) and [March 11, 2014 Forum Report: The Conference Board's Task Force Definition of Responsibilities for Investor Access](#).

<sup>4</sup> For examples of different concerns about preferential access, see [March 26, 2014 Wall Street Journal: "Activist Investors Often Leak Their Plans to a Favored Few"](#) and [May 14, 2014 Bloomberg: "Jana Says Firm Is Working With Walgreen After Transaction"](#).

Please offer your comments on these and any related considerations of either corporate or investor responsibilities for informed decisions. We are now trying to prepare a final program report of consensus views about marketplace requirements of fair investor access to decision-making information, and will appreciate your guidance.

*GL – August 11, 2014*

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