

Carlyle: independent NED expertise unnecessary

Is it okay for a fund board, with a complex strategy, to rely upon its executive directors for its expertise? The judgement of a Guernsey Court, following the Carlyle Capital Corp collapse with losses of over \$1 bn, says that it is.

The fallout from the recent Carlyle case in the Guernsey courts has opened up a fascinating debate about the need for independent expertise on fund boards.

In particular it gives rise to the question of whether non-executive directors should have to have some expertise – or indeed any real understanding of the fund’s investment strategy at all - in order to be on the board. Put the other way around, is it acceptable for a board of a fund, with a complex strategy, to rely exclusively upon its executive directors for its knowledge of the investment policy?

First the background: 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. The Court ruled that there was no breach of duty or wrongful trading and found in favour of the defendants. The liquidators say they may appeal the ruling.

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Fund board ratings

The NED is consulting with subscribers on introducing a rating system for fund boards in 2018. It has made progress on the criteria to be used for the ratings since our November issue and we would like to hear from all other interested parties by late January.

The reaction to this initiative has been positive but cautious. Most of the feedback received to date has focussed on how this might be done and what the point of rating fund boards would be.

As we have a number of questions along these lines we thought it would be a good idea to give readers more on this now, even though it is still early days in this consultation period.

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