



MEMORANDUM

To: Board of Trustees
From: Bonni S. Jensen
Subject: Delaware Law Change Permits Companies to Insulate Corporate Officers From Liability for Reckless Conduct
Date: November 2022

The securities monitoring law firm of Bernstein Litowitz Berger & Grossman has informed us of a law change in Delaware that may affect your Fund's ability to collect from companies that have acted recklessly in managing companies in which you invest.

A longstanding principle of corporate law is that both directors and officers of corporations owe the fiduciary duties of care and loyalty to their stockholders. Delaware, the state of incorporation for many companies across the world, recently amended their law to permit corporate charter provisions exempting officers from liability to stockholders for grossly negligent conduct. Delaware Statutes Section 102(b)(7).

Since for about 40 years, Delaware's corporate law statute permitted corporations to include provisions in a company's charter to protect members of corporate Boards of Directors from personal liability for breaching their duty of care, unless they acted in bad faith or for self-interest. This protection makes sense, in part, because outside directors rely on corporate officers and senior managers for the day-to-day management of the companies. This year, the Delaware Legislature amended the law this same protection to corporate officers.

To make the changes, companies will need to revise their charters, which will require a vote of the shareholders. Since the Board of Trustees of this Fund does not vote their own proxies, we suggest that the following be added to your proxy policy:

Corporate Charter Provisions Addressing Director and Officer Exculpation from Personal Liability

1. Outside and non-conflicted directors are often expected to, and often should, rely on the care and diligence exercised by corporate officers in performing their day-to-day managerial roles for the corporation. Charter provisions exculpating outside and non-conflicted directors from personal financial liability for breaches of the duty of care can, in many instances, be consistent with the relationship among directors and officers, and can help encourage qualified individuals to serve as outside directors. Accordingly, the Fund will, in typical circumstances, support corporate charter provisions that exculpate outside directors for breaches of the fiduciary duty of care.
2. However, exculpating corporate officers from breaches of the duty of care, including grossly negligent and reckless conduct, is inconsistent with the logic for exculpating outside directors for breaches of the duty of care. Accordingly, the Fund does not support extending exculpation and immunity from personal financial liability to corporate officers, and will vote against any proposed charter amendments seeking to provide such immunity.

If the Board does not have a proxy voting policy we recommend that the Board consider communicating this information to each individual managers that votes proxies, recommending that they vote against the proposal.

Please add this item to your agenda for your next meeting.