

## **CONFIDENTIALITY OF BOARD DELIBERATIONS RESOURCES**

### **LAW REVIEW ARTICLES**

Gregory H. Shill, *The Golden Leash and the Fiduciary Duty of Loyalty*, 64 UCLA LAW REVIEW 1246 (2017). See the discussion on pages 1286-1296. Available at <https://www.uclalawreview.org/wp-content/uploads/securepdfs/2017/09/Shill-Article-64-5.pdf>.

*This law review article examines information sharing arrangements in the context of bonus compensation arrangements (often referred to as “golden leashes”) provided by activist investors to their board designees. The discussion at pages 1286-1296 focuses upon overlapping duties of loyalty in two situations: (1) designated directors sharing company information with their nominating shareholders and (2) venture capital funds nominating directors to the boards of companies in which they invest.*

J. Travis Laster and John Mark Zeberkiewicz, *The Rights and Duties of Blockholder Directors*, 70 THE BUSINESS LAWYER 33 (Winter 2014/2015). See the discussion on pages 52-60. Available at [https://www.rlf.com/files/10693\\_article-blockholder-directors-201501.authcheckdam.pdf,%20Mee\\_Vz.pdf](https://www.rlf.com/files/10693_article-blockholder-directors-201501.authcheckdam.pdf,%20Mee_Vz.pdf).

*In the discussion of director duties and conflicts at pages 52-60, this law review article explores confidentiality and information sharing by blockholder directors.*

Cyril Moscow, *Director Confidentiality*, 74 LAW AND CONTEMPORARY PROBLEMS 197 (Winter 2011). Available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=https://www.bing.com/&httpsredir=1&article=1620&context=lcp>.

*This law review article explores modifying the concept that directors may never disclose nonpublic information to reflect the business contexts in which issues arise. The author concludes that many situations do not involve damage to the corporation, or there is express or implied consent to the sharing of information.*

### **OTHER ARTICLES AND BLOGS**

Amy Simmerman, Brad Sorrels and Nate Emeritz, *Information Rights of Conflicted Directors*, Harvard Law School Forum on Corporate Governance and Financial Regulation, July 31, 2018. Available at <https://corpgov.law.harvard.edu/2018/07/31/information-rights-of-conflicted-directors/#more-109301>.

*This blog post addresses the information rights of directors designated by a controlling stockholder.*

Lindsay Frost, *Activist-Appointed Directors Causing Confidentiality Concerns*, Agenda, April 4, 2016. Available at <https://www.conference-board.org/retrievefile.cfm?filename=AgendaWeek-040416.pdf&type=subsite>.

*This article explores what information activist-designated board members should be allowed to share with their sponsor funds and the related use of confidentiality agreements and codes of conduct.*

Steven B. Stokdyk and Joel H. Trotter, Maintaining Director Confidentiality, Harvard Law School Forum on Corporate Governance and Financial Regulation, February 15, 2016. Available at <https://corpgov.law.harvard.edu/2016/02/15/maintaining-director-confidentiality/>.

*This article examines steps companies can take to reduce the likelihood of boardroom leaks and the damage that may result from such leaks.*

David A. Katz and Laura A. McIntosh, Corporate Governance Update: Boardroom Confidentiality Under Focus, New York Law Journal, January 23, 2014. Available at <https://www.law.com/newyorklawjournal/almID/1202639470029/?sreturn=20171006120954>.

Also published under the abbreviated title Boardroom Confidentiality Under Focus on the Harvard Law School Forum on Corporate Governance and Financial Regulation on January 23, 2014. Available at <https://corpgov.law.harvard.edu/2014/01/23/boardroom-confidentiality-under-focus/>. Additionally, available in the form of a Wachtell memo.

*This article explores what constitutes confidential boardroom information, situations in which disclosure occurs, the use of confidentiality policies and how the board can respond to directors breaching confidentiality.*

Kerry E. Berchem, Rick L. Burdick, Garrett A. DeVries, David Patrick Elder, Jo-Ellyn Sakowitz Klein, Christine B. LaFollette, Bruce S. Mendelsohn, J. Kenneth Menges Jr., C.N. Franklin Reddick III and Rolf Zaiss, Address Boardroom Confidentiality, AG Deal Diary, January 5, 2014. Available at <https://www.akingump.com/en/experience/practices/corporate/ag-deal-diary/address-boardroom-confidentiality.html>.

*This blog post discusses steps that a board can take to help preserve boardroom confidentiality.*

Spencer D. Klein and Enrico Granata, Practical Tips on Boardroom Confidentiality, Vol. 21, Number 3 The Corporate Governance Advisor 7 (May/June 2013). Available at <http://media.mofo.com/files/uploads/Images/1305-Practical-Tips-on-Board-Confidentiality.pdf>.

Also available as Morrison & Foerster client memo. Available at <http://media.mofo.com/files/uploads/Images/130312-Practical-Tips-on-Board-Confidentiality.pdf>.

*This article seeks to provide practical advice that a board can follow to address some of the principal issues relating to board confidentiality.*

NACD Insight & Analysis: Boardroom Confidentiality Policies, NACD Blog, March 25, 2011. Available at <https://blog.nacdonline.org/tag/boardroom-confidentiality-policy/>.

*This blog post suggests that directors revisit and clarify boardroom confidentiality policies.*