

The Evolving Fiduciary Obligations of Pension Plans: Appreciating the New Emphasis on Evaluating Risks to Sustainable Performance

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Evolution of Fiduciary Standards

- > Feudal system
- > Transplanting legal standards into and back out of corporate law/contract
- > Quantitative standards
- > Qualitative standards
- > Back to the Future
 - Duty of loyalty
 - Focus on risk mitigation/management

The Impact of Modern Portfolio Theory

- > Assumption
 - Rational economic actors maximize returns
 - They operate in efficient markets
- > Impact on Fiduciary Norms
 - Prudent investor standard
 - Reversal of non-delegation doctrine
- > Impact on Fiduciary Behaviour
 - Increased agency costs
 - Perverse effects of benchmarking performance
 - Portfolio-wide and collective action feedback loops

A Broader View of Risk Management

- > Universal ownership
- > Efficient markets?
- > Longer term sustainability – need for new benchmarks
- > Connectedness/feedback effects
 - What connects us are not just contracts
 - Nor do governments have sufficient information/power to intervene in the necessary ways

Refining Fiduciary Norms (aligning incentives to interests of beneficiaries)

- > Duty of loyalty (to beneficiaries vs. the “plan”)
- > Duty of impartiality
- > Duty of attentiveness (constraints on delegation)
- > Duty to monitor (do no harm), including risks posed by changed circumstances
- > Duty to engage/consult and of candor (investees, beneficiaries)
- > Duty to minimize costs (and align incentives)

Implications for Disclosure/Reporting

- > “Fit for Purpose” Boards
- > Incentives/Accountability in the supply chain
 - Addressing conflicts of interest
- > Refining performance measurement
 - Asking the right questions
 - Relevance vs. reliability
- > A broader view of materiality
 - TSC vs. Northway Industries
- > Reporting/assurance as a process (vs. outcome)

QUESTIONS & ANSWERS

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