Contents

Foreword ix

Task Force on Fund Director’s Guidebook, Federal Regulation of Securities Committee, Fourth Edition xii

Section 1: Background and Structure of the Guidebook 1

Section 2: Regulatory Overview 3
  A. The Legal Framework 3
  B. Structure of the Typical Fund and Role of the Independent Director 5
  C. Increased Regulatory Scrutiny by the SEC and Increase in Civil Litigation 6
  D. The CFTC 9
  E. Other Regulators 10
  F. Impact of the Dodd-Frank Act 11
  G. Development of Best Practices 13
  H. Importance of Staying Current with Industry and Regulatory Developments 14

Section 3: Fiduciary Duties and Responsibilities of Fund Directors 15
  A. Responsibilities and Duties of Fund Directors Under State Law 15
     1) Introduction 15
     2) Duty of Loyalty 17
3) Duty of Care 19
4) Other Duties 22

B. Fund Directors’ Responsibilities Under the 1940 Act 22

Section 4: Fund Governance 23
A. Composition of the Board—The Independent Director 23
   1) Desirability of Independent Directors Generally 23
   2) 1940 Act Independence Requirements 24
   3) Independent Chair 26
   4) Importance of Maintaining Independence 26
   5) Service on More Than One Board in a Complex 27
B. Board Committees 28
   1) Audit Committees 29
   2) Nominating Committees 33
   3) Other Committees 34
C. Board Operations 34
   1) Operating Style 34
   2) Size of Board of Directors 35
   3) Director’s Time Commitment 35
   4) Meetings 36
   5) Meeting Agendas 37
   6) Independent Counsel and Other Resources 38
   7) Annual Self-assessments 39
   8) Independent Director Compensation 39
   9) Procedural Standards Set by the Courts 40
  10) Quality of Information 41
  11) Disagreement 41
  12) Term of Service 42

Section 5: Board Responsibilities with Respect to Investment Advisory Arrangements 43
A. Statutory Responsibilities 43
B. Factors to Consider in Carrying Out Responsibilities 44
   1) Nature and Quality of the Services 46
   2) Performance 46
   3) Fees and Expenses 47
   4) Profitability 48
   5) Economies of Scale 48
   6) “Fall-out” Benefits 49
C. Disclosure Requirements as to Director Deliberations 49
D. Sub-advisory Contracts and the Multi-manager Structure 51
E. Other Arrangements with Affiliates 53
F. Change of Control of the Investment Adviser or Distributor; Assignment 53

Section 6: Board Responsibilities with Respect to Distribution Arrangements 55
A. Importance of an Effective Distribution System 55
B. Distribution Financing Techniques 56
C. Revenue Sharing and Shelf Space Payments 57
D. Board Responsibilities 59
   1) Regulation of Distribution Arrangements 59
   2) General Responsibilities for Distribution 59
   3) Oversight of Rule 12b-1 Plans 60
   4) Review of Multiple Class Arrangements 62
   5) Prohibition on Directing Portfolio Transactions to Promote Sales of Fund Shares 63
   6) Consideration of Imposition of a Short-term Redemption Fee 63
   7) Monitoring of Sales Practices 64
   8) Payments to Third-party Intermediaries for Distribution and/or Sub-transfer Agency Services 65

Section 7: Statutory, Regulatory, and Oversight Responsibilities 69
A. Oversight Responsibilities 69
   1) General Responsibilities 69
   2) Monitoring Conflicts of Interest 70
   3) Overseeing Risk Management, Internal Controls, and Compliance Procedures 71
B. Portfolio Management 74
   1) Investment Oversight 74
   2) Portfolio Trading Practices 75
   3) Soft Dollar Arrangements 77
   4) Trade Allocation 79
   5) Management of Other Accounts Including Hedge Funds and Foreign Funds 80
   6) Portfolio Liquidity 80
   7) Securities Transactions with Affiliates 81
   8) Securities Lending 82
9) Certain Special Types of Investment Practices 84
10) Leverage 84

C. Other Specific Statutory and Regulatory Responsibilities 85
   1) Custody Arrangements 86
   2) Fidelity Bonds and Joint Insurance Policies 86
   3) Selection of Independent Accountants 87
   4) Codes of Ethics 87
   5) Fund Names 89
   6) Anti-money Laundering 89
   7) Privacy Procedures 89
   8) Insider Trading 90
   9) Business Continuity Plan 91
  10) Cybersecurity 91
  11) Social Media 92
  12) Whistleblower Program 93
  13) Market Timing 94

D. Role of the Board in Special Situations 94
   1) Statutory, Regulatory, and Related Problems or Violations 95
   2) Mergers and Liquidations 96

Section 8: Board’s Responsibility for Valuation 101
   A. Net Asset Value Determination 101
   B. Board’s Fair Value Obligation 102
   C. Valuation Policies and Procedures 103
   D. SEC Enforcement Actions Against Directors Regarding Valuation 106

Section 9: Compliance Programs 109
   A. Required Policies and Procedures 109
   B. Role of the Chief Compliance Officer 110
   C. Oversight of Service Providers 111
   D. CFTC Compliance 112

Section 10: Board Oversight of Use of Derivatives and Alternative Investment Strategies 113
   A. Introduction 113
   B. Applicable Law 115
      1) Public Disclosures 115
2) Other Applicable Securities Regulations 115
3) Tax Provisions and Cayman Subsidiaries 116
C. Practical Guidance on Oversight 117

Section 11: Disclosure Requirements 119
A. Disclosure Materials 119
  1) Registration Statements and Prospectuses 119
  2) Reports to the SEC and Shareholders 121
  3) Proxy Statements 121
  4) Disclosure of Proxy Voting 122
B. Certification of the Accuracy of Reports Filed with the SEC 122

Section 12: Money Market Funds 125
A. Board Findings 126
B. Required Procedures 127
C. Oversight 127
D. Valuation 128
E. Portfolio Quality 128
F. Security Downgrades 128
G. Security Defaults and Other Events 129
H. Delegation of Duties 129

Section 13: Closed-end Funds 131
A. Overview 131
  1) Differences between Closed-end and Open-end Funds 131
  2) Regulation of Closed-end Funds 132
  3) Shareholder Meetings 132
  4) Tendency of Closed-end Fund Shares to Trade at a Discount 132
B. Senior Securities and Leverage 133
C. Offerings of Common Equity 134
D. Illiquid Investments 136
E. Interval Funds 137
F. Share Repurchases 137
G. SEC and Stock Exchange Regulation 138
  1) Audit Committee Requirements 139
  2) Short-swing Profits 140
  3) Insider Trading 140
H. Corporate Governance and the Discount 141
   1) Duties and Powers of Directors 142
   2) Actions to Address the Discount 143
   3) Board Governance Measures 145
   4) Federal Proxy Rules 146

Section 14: Exchange-traded Funds 149
   A. Overview 149
   B. Regulatory Framework 150
   C. Purchasing and Redeeming Shares 150
   D. Premium/Discount 151
   E. Director Oversight 152

Section 15: Other Types of Funds 153
   A. Hedge Funds and Private Investment Companies 153
   B. Funds Investing in Foreign Securities 154
   C. Funds Used as Funding Vehicles for Insurance Products 154
   D. Registered Funds of Hedge Funds 156
   E. Bank-related Funds 157
   F. Business Development Companies 158

Section 16: Liability Limitation, Indemnification, and Insurance 159
   A. Limitation of Liability 159
   B. Indemnification 160
   C. Advancement of Expenses 161
   D. Insurance Issues 161

Appendix A: Regulatory Calendar 165

Glossary 169

Keyword Index 179