

# Forming and Nurturing the Board's Relationship with the CEO

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# FORMING AND NURTURING THE BOARD'S RELATIONSHIP WITH THE CEO



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***"When you were made a leader you weren't given a crown, you were given the responsibility to bring out the best in others."***



# BOARD AND CEO



## BOARD OF DIRECTORS

- Fundamental Responsibility — Exercise independent judgment to provide knowledgeable oversight over management decisions and performance.

## CEO

- Fundamental Responsibility — Execute the strategies and day-to-day management.

# MARKET BASKET V. ARTHUR T. DEMOULAS – CAUTIONARY TALE



# LAWSUIT FILED – MARKET BASKET’S COMPLAINT AGAINST CEO DEMOULAS



- 4. Up through his recent termination on September 9, 2025, Market Basket’s then-CEO and President, Defendant Arthur T. Demoulas (“Defendant” or “Mr. Demoulas”), had a long-standing history of exercising his own **unfettered discretion** as to virtually every important decision at the Company—while ignoring and stonewalling the Market Basket Board. After joining the Board, the Plaintiff Directors decided to depart from the path of the prior Board members, who either had capitulated to Mr. Demoulas’s bullying tactics or, like the recently removed fourth Board Member Bill Shea, willingly did Mr. Demoulas’s bidding. The Plaintiff Directors decided to put their foot down and, in the words of an immortal football coach in New England, “Do Your Job”—which they began to try to do several years ago by seeking to discharge their **fiduciary responsibilities** of oversight over Mr. Demoulas and the Company’s operations. This did not sit well with Mr. Demoulas, who fought the Plaintiff Directors every step of the way.

# MARKET BASKET'S COMPLAINT



- 5. As Mr. Demoulas has said, “[t]here’s only one boss in the company. There’s not two. There’s not three. There’s not five.” Even though he is only a minority stockholder, owning just 28.4% of DSM’s outstanding stock, for years Mr. Demoulas has acted as if he were the sole owner of the Company and rejected any form of even the most basic oversight by the Board. Contrary to Delaware law and basic principles of corporate governance, he has refused to provide the Board with basic information about the Company and its plans or to comply with basic, lawful directives of the Board. He also insisted that he, and not the Board, would select his successor, stating to the Board that he would unilaterally install his children into the top positions in the C-suite following his eventual departure—without regard for the Board’s views on the matter. Under Delaware law, Mr. Demoulas—like all CEOs and other corporate officers—has a fiduciary duty, at minimum, to keep the Board informed of operational and other significant matters and to follow the lawful directives of the Board. But not according to Mr. Demoulas, who acknowledged no one’s authority but his own.

# MARKET BASKET'S COMPLAINT



- 9. Finally, having gotten nowhere with Mr. Demoulas, in August 2024, the Plaintiff Directors adopted a formal resolution directing Mr. Demoulas to comply with basic requirements of Board oversight, including: (1) providing the Board with an annual budget and periodic budget updates during the course of the year; (2) giving the Board advance notice of and obtaining approval for all capital expenditures (“CapEx”) in excess of \$10 million, and informing the Board of any material events at the Company; (3) requiring senior management of Market Basket to attend and present at Board meetings, so that the Board could assess their roles and performance and form functional relationships with them; and (4) directing Mr. Demoulas to work together with the Board on a mutually satisfactory succession plan. Despite the Plaintiff Directors' persistent requests that Mr. Demoulas comply with these straightforward directives, months and months went by without Mr. Demoulas even beginning to perform a single one of them.

# DECLARATORY JUDGMENT AGAINST DEMOULAS – TERMINATION OF EMPLOYMENT

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- **CAUSES OF ACTION: COUNT I (Declaratory Judgment)**
- 67. At a duly called and convened meeting of the Board of DSM and OpCo held on September 9, 2025, at which all Directors (constituting a quorum) were present, the Directors unanimously adopted resolutions terminating Mr. Demoulas and removing him as President and CEO of both companies.

# DEMOULAS' LAWSUIT AGAINST THE BOARD OF DIRECTORS



- Given the Company's exceptional performance and Market Basket's vibrant culture, it came as a surprise to Mr. Demoulas when three members of DSM's Board purportedly formed the illicit Executive Committee, which proceeded unlawfully to put Mr. Demoulas and his management team on leave for an indefinite period. The limbo in which the Executive Committee placed Mr. Demoulas lasted nearly three-and-a-half months until the Board finally terminated Mr. Demoulas on September 9, 2025, late in the evening, at the conclusion of an unsuccessful mediation, and immediately filed this preprepared baseless lawsuit. As detailed below in the verified counterclaim, the process that led to Mr. Demoulas's termination was riddled with conflicts, trickery, deceit, and pervasive breaches of DSM's Bylaws and the Director Plaintiffs' fiduciary duties.

# COUNTERCLAIM — AGAINST MARKET BASKET AND BOARD

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- Demoulas is entitled to declaratory judgments that: The Executive Committee's formation was improper, and all actions purportedly taken by the Executive Committee are void ab initio; Any appointments by the Executive Committee to fill officer vacancies are prohibited by Section 3.11 of the Bylaws and are therefore invalid and ineffective; The appointment of any person other than the Company's Secretary or Treasurer to the role of President of the Company in Mr. Demoulas's absence while he was on administrative leave is improper under Section 4.5 of the Bylaws and therefore invalid and ineffective; All actions by Mr. Kettenbach, Jr. acting as the de facto President and CEO while Mr. Demoulas was on administrative leave are null and void; The Director Defendants' decision to remove Mr. Demoulas from his officer positions was self-interested, at the behest of the Sisters, and in contravention of the Director Defendants' fiduciary duties, and is therefore unenforceable as a matter of equity;

# COUNTERCLAIM — AGAINST MARKET BASKET AND BOARD



- The Director Defendants exercised their discretion under Section 4.2 of the Bylaws to remove officers unreasonably and arbitrarily, not for any rational business purpose, but rather in bad faith and for the purposes of maintaining their Board seats and appeasing the Sisters' personal interests in contravention of the implied covenant of good faith and fair dealing, and the Director Defendants' removal of Mr. Demoulas is therefore invalid and ineffective as a matter of equity; The Director Defendants' termination of Mr. Demoulas from his roles as President and CEO violated the terms of Section 4.2 of the Bylaws because he was not given proper notice of the cause for his termination or a reasonable opportunity to be heard by the Board in response to the supposed cause, and the Director Defendants' removal of Mr. Demoulas is therefore invalid and ineffective; and Mr. Demoulas was wrongfully removed from his President and CEO positions and he is reinstated as the President and CEO of the Company. 120. Mr. Demoulas lacks an adequate remedy at law.

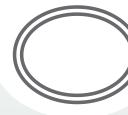
# DUTIES AND STANDARDS OF CONDUCT OF DIRECTORS — LEGAL SOURCES

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- FEDERAL CREDIT UNION ACT – OTHER STATUTES
- REGULATIONS
  - NCUA AND OTHER REGULATIONS IMPOSE FUNCTIONAL DUTIES
  - NCUA DIRECTOR DUTY REGULATIONS
- BYLAWS
- COMMON LAW – (CASE LAW) REGARDING CORPORATIONS AND CREDIT UNIONS

## FEDERAL CREDIT UNION ACT —

### § 701.4 General authorities and duties of Federal credit union directors.



- **§ 701.4 General authorities and duties of Federal credit union directors.**
- **Cross Reference**
- Link to an amendment published at 89 FR 104876, Dec. 26, 2024.
- (a) ***General direction and control of a Federal credit union.*** The board of directors is responsible for the general direction and control of the affairs of each Federal credit union. While a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's direction and control is non-delegable.

## § 701.4 (CONTINUED)

- (b) **Duties of Federal credit union directors.** Each Federal credit union director has the duty to:
  - (1) Carry out his or her duties as a director **in good faith, in a manner such director reasonably believes to be in the best interests of the membership** of the Federal credit union as a whole, and with the care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;
  - (2) Administer the affairs of the Federal credit union **fairly and impartially and without discrimination** in favor of or against any particular member;
  - (3) At the time of election or appointment, or within a reasonable time thereafter, not to exceed six months, **have at least a working familiarity with basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement and to ask, as appropriate, substantive questions of management and the internal and external auditors**; and
  - (4) **Direct management's operations of the Federal credit union in conformity with the requirements set forth in the Federal Credit Union Act, this chapter, other applicable law, and sound business practices.**

# FIDUCIARY DUTIES – FOR BOARD AND CEO

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- DUTY OF CARE
- DUTY OF LOYALTY
- GOOD FAITH AND FAIR DEALING

# DUTY OF CARE

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- Be REASONABLY INFORMED
- INQUIRY – ask the necessary questions
- DILIGENCE – devote the necessary time and attention to the job
  - Attend Meetings
  - Actively Participate
- SKILL –
  - Become educated on relevant issues,
  - Obtain assistance or advice when necessary
- USE PROFESSIONALS – who are trustworthy
- EXERCISE INDEPENDENT JUDGMENT

# DUTY OF LOYALTY

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- REASONABLE BELIEF THAT DIRECTOR'S ACTIONS ARE IN THE CREDIT UNION'S BEST INTEREST
- DIRECTORS MAY NOT USE POSITION FOR PERSONAL GAIN
- CONFLICT OF INTEREST HANDLED APPROPRIATELY

# GOOD FAITH AND FAIR DEALING

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- GOOD FAITH AND FAIR DEALING
- OPPOSITE OF BAD FAITH
- NO ULTERIOR/IMPROPER MEANS
- COMBINATION OF DUE CARE AND LOYALTY (OVERLAP)

# FAILURE TO EXERCISE DUTIES — LIABILITY

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- Civil Liability
  - To injured party
  - Credit union
  - Members
  - Regulator
  - Insurance Company
  - Employee (including CEO)
  - For money damages, declaratory judgment, nonmonetary damages
  - Regulatory penalties

# UNDERLYING KEY CHARACTERISTICS OF SUCCESSFUL BOARD/CEO RELATIONSHIP

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- Balance and Mutual Respect
- Difference of Opinions — High quality challenge and debate
- Accountability and Oversight
- Trust
- Understanding of legal obligations, ethics, and behavior

# COMMON PITFALLS TO AVOID

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- CEO dominated board
- Rubber Stamp board
- Mean Girls board
- Untouchable CEO
- Out of Touch board

# CRITICAL STEPS FOR BOARD MEMBERS

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- ATTEND BOARD MEETINGS
- KNOW THE LEGAL FRAMEWORK
- EDUCATION
- TAKE THE ACTION SPECIFICALLY REQUIRED BY THE BOARD
- EXAMINE THE FINANCIAL REPORTS
- ACT ON THE REGULATORS' EXCEPTIONS
- ESTABLISH WRITTEN POLICIES AS REQUIRED BY LAW
- ESTABLISH BUDGET/GOALS/BUSINESS PLAN
- DEVELOP STRONG AND DISCERNING NOMINATING COMMITTEE
- STAY ALERT

# CRITICAL STEPS FOR BOARD MEMBERS (CONTINUED)

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- ASK QUESTIONS
- SHARE INFORMATION
- OBTAIN COMPETENT ADVICE
- CONSIDER ALTERNATIVES
- MAKE TIMELY DECISIONS
- DISCLOSE ALL CONFLICTS AND POTENTIAL CONFLICTS
- PUT IT IN WRITING
- ALLOW MANAGEMENT AND STAFF TO MANAGE THE CREDIT UNION

# ANTICIPATE/PREPARE FOR HARD CONVERSATIONS

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## I) CEO COMPENSATION

- SET THE STAGE – PRODUCTIVE INTERACTIONS
- COMMUNICATE VIEWS ON PAY PHILOSOPHY—BEFORE NEGOTIATIONS START
  - Healthy pay practices: how to structure, what to reward
  - Careful communication and timing

## 2) ANNUAL CEO EVALUATION—INTEGRITY/FAIRNESS – OPEN DIALOGUE/EFFECTIVE EVALUATION PROCESS

- BOARD – CLEAR EXPECTATIONS/NO SURPRISES
- CEO – RECOGNITION OF FEEDBACK

# ANTICIPATE/PREPARE FOR HARD CONVERSATIONS

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## 3) EXECUTIVE SESSION OF BOARD

- STAY ON TASK/ORGANIZED
- EFFECTIVE COMMUNICATION
- DIRECT AND OPEN TO CEO

## 4) CREDIT UNION CRISIS/TIME OF ADVERSITY

- TEAMWORK
- ROLE OF BOARD CHAIR – SUPPORT CEO
- ROLE OF CEO – KEEP BOARD INFORMED IN TIMELY MANNER – SHARE GOOD AND BAD

# THANK YOU!

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