

disclosable interested persons transaction is considered to lack independence. Still, unless the state law limits the number of interested directors, the IRS has no power to limit the number.

In comparison, for determining whether a tax-exempt health care corporation would be considered to have a “community board,” the IRS has indicated that practicing physicians “affiliated” with a hospital—such as medical staff members—are not considered independent, based on their “close and continuing connection” to the hospital, without regard to whether the nonprofit hospital compensates the physicians in any amount.<sup>9</sup> See also *Chapter 4, Taxation*, for more information on Form 990 requirements as it relates to the governance.

### ***Having adequate information***

To function effectively, a director needs to be adequately informed.

**Assuring the adequacy and clarity of information.** To satisfy the duty of care effectively, directors need to have an adequate source of information flow. This information is generally supplied by the corporation’s management and other staff. To the extent that it is not adequate, a board or an individual director will have to determine what additional information is needed. The directors should carefully read the information supplied. If the information is highly technical, lengthy, or otherwise difficult to comprehend, the board may find it helpful to request an executive summary or other version of the information, which is in a more understandable form. The directors also may want to insist that these materials be furnished far enough in advance that they have sufficient time to review and analyze the information.

In addition, a board member should ask questions at the board meeting as necessary to clarify the information or help assure the director that he or she has fully understood it. If a director has a special expertise with respect to a certain kind of information, he or she may assist the other board members by asking clarifying questions, or in pointing out specific items to the rest of the board. (However, such director should try to avoid stating opinions in such a way that other directors are tempted or pressured to “rely” on the director’s opinion without engaging in independent analysis). (See the discussion in the section “*Directors may give weight to the views of directors. . .*” above.)

**Sources of board information.** In some small nonprofit entities, such as neighborhood improvement bodies or condominium associations, the board itself may be its own primary source of information. With larger organizations, however, the board will inevitably use and rely on information prepared by the corporation’s officers and agents. This means that the corporation’s staff will inevitably have a significant effect on the board’s decisions since the staff will select much of the information the directors receive. Even when a director has total and justified confidence in the suppliers of information, he or she should be at least aware that for every piece of information received, other