

Corporations Hypothetical October/November 2022
Consider the legal issues arising out of the following facts:

Alphacorp is a corporation incorporated in Delaware and is in the business of working with businesses on improving their ESG policies, including advice on sustainability, employment-related policies, and governance. In addition to providing advice as a consultant, Alphacorp has also developed a ratings system which identifies ESG strengths and weaknesses of different businesses. Recently Alphacorp has seen a dramatic increase in interest in its services.

Bella and her sister, Cara, are founding shareholders of Alphacorp (each owns 20% of the common stock of the corporation), and they are also officers and directors. Bella is CEO, and Cara is CFO. Drake is the Chief Legal Officer (CLO), and Ed is the Chief Sustainability Officer. Alphacorp has 3 non-executive directors: Floyd, George, and Hilda.

Ed becomes aware that a number of businesses which received high ESG ratings from Alphacorp have been publicly identified as having major environmental issues which may lead to liability and/or enforcement proceedings. He does not disclose this information to the Board. Meanwhile, securities regulators in the US and internationally have begun to focus on whether ESG ratings should be regulated. Ed is aware of these developments but does not inform the Board.

Ybank invites Bella and Cara to go on an all-expenses paid trip to a luxury resort with their families to participate in Ybank's annual investment banking conference. Bella's and Cara's cousin, Izzie, is the CEO of Ybank and their families have always been very close, vacationing together every summer on the family farm for as long as they can remember. During the conference, Izzie explains to Bella and Cara that Ybank can be really useful to Alphacorp in identifying investors who can finance Alphacorp's expansion.

After the conference, Bella and Cara persuade the Alphacorp Board to hire Ybank to help them find new investors. The Board agrees without much discussion. Izzie then introduces Jay, the CEO of Zcap, to Bella and Cara as a possible investor for Alphacorp. Cara and Bella agree that Alphacorp will issue preferred shares (which only carry voting rights on matters affecting the preferred stock) to Zcap and that Zcap will be able to appoint one director to the Alphacorp Board. After brief discussions between Bella, Cara, Izzie, and Jay, a price is agreed. They also agree that Bella will join Zcap's Board of Directors. Bella and Cara present the proposal to issue the preferred shares to the Alphacorp Board, and Izzie attends the meeting to discuss the proposal. The Board is not informed that Bella is to join Zcap's Board, nor that Ybank will receive a handsome fee for introducing Zcap to Alphacorp (a fee that Alphacorp will pay). The Board approves the proposal after limited discussion.

