

Governance and Ethics Committee

July 28, 2011

Compliance - Legal/Regulatory Requirements; Review – Ethical Standards/Compliance; Trends and Best Practices

- Article VIII.G of the Port Authority's By-Laws – Oversight Responsibility re: Compliance with Legal and Regulatory Requirements
 - Financial Disclosure
 - Ethics Training
 - Fiduciary Duty
- Review of Ethical Standards (NY and NJ) – Adequacy of Commissioners' Code of Ethics/Compliance
- NY/NJ and Corporate Trends and Best Practices

Financial Disclosure

- All Commissioners (NY and NJ) are required to provide General Counsel with financial information by the Commissioners' Code of Ethics
- Executive Order No. 24 (April 27, 2010; Governor Christie)
- Largely continues prior financial disclosure reporting process
- All Commissioners are in compliance with their obligations

Ethics Training

- All Commissioners (NY and NJ) receive briefing materials regarding general ethical considerations and applicable statutes and related material
- Relevance in light of Code of Ethics for Port Authority Commissioners
- New Jersey Commissioners have received NJ Ethics Training
- Recent New York State Initiatives

Comparison of New York and New Jersey Ethics Laws

SUBJECT MATTER	NEW YORK	NEW JERSEY
General Conduct Standards	Independence/objectivity; No conflicting employment/financial interest	Similar standards
Financial Disclosure	Multi-state board members exempt	Required
Gifts	No solicitation; acceptance of gifts	Similar Standards
Political Activity	No party affiliation; campaign contributions affects contracts or decisions	Similar Standards
Post-employment Restrictions	Multi-state board members technically exempt; relevant under Ethics Commission rules; 2-year bar on Agency matters; lifetime bar on matters with direct participation	One-year bar on Agency matters (only for certain Executive Branch officials); lifetime bar applies (similar standard); imputed disqualification for entity with more than 10% interest
Family Members – Personnel Matters	No participation in decisions involving relatives	Similar standards; relative of NJ member of bi-state agency board not to be hired
Official Action – No Self-Dealing	No official participation in contracting decision >\$1,000 with financial interest for self or relative	Similar standard but applies only to the individual and no \$ threshold
Business or Professional Activities	No contract with state agency >\$25 except after public bidding	Similar standard (with Ethics Commissioner approval)

Review/Evaluation of Commissioners' Code of Ethics Adequacy

- Standard of Conduct – “Comply with all applicable laws, rules and regulations applicable to the Commissioner as an unsalaried public officer from his/her state of appointment.”
- Traditional and long standing commitment to the highest standards of integrity in the public service
- New York Commissioners – Sections 73 and 74 of New York Public Officers Law, and Section 410 of New York Education Law
- New Jersey Commissioners – New Jersey Conflicts of Interest Law

New York - Trends

- Public Integrity Reform Act of 2011
 - Establishes New Joint Commission on Public Ethics (executive and legislative branches)
 - Expands and enhances financial disclosure requirements, including disclosure of outside clients and customers
 - Establishes a new database (“Project Sunlight”) to aggregate information on firms/individuals appearing in representative capacity before NYS agencies, authorities, boards, commissions
 - Requires mandatory ethics training for NYS Financial Disclosure Statement filers
 - Increases penalties for violations of Code of Ethics (Section 74, Public Officers Law) and campaign finance law violations
 - Requires reduction or forfeiture of public officer’s pension for certain felony convictions related to his/her office
 - Expands definition of lobbying to include advocacy re: introduction of legislation and regulations

New York - Trends

- 2009 Public Authorities Reform Act

- Directors of authorities required to sign Acknowledgment of Fiduciary Duty
- Authority Boards required to perform annual self-evaluation
- Establishment of finance committee mandated for debt-issuing authorities

Additional reporting responsibilities for authorities

NJ - Trends

- Executive Order No. 24 (Governor Christie)

Corporate Governance in the Public Authority Context - General

- The rules, policies and management practices established by an organization to help it conduct business consistent with its corporate and public responsibilities.
 - Establish culture, values, organizational structure and control systems that promote accountability and integrity
 - Set a standard of ethical behavior
 - Support comprehensive, accurate and transparent reporting and an objective review of financial practices
 - Engender loyalty toward the organization

Effective corporate governance contributes to public confidence in the performance and decision making of an organization.

Corporate Governance in the Public Authority Context - Elements

- Transparency
 - Conduct business in an environment that fosters transparency and enhanced public disclosure
 - Focus on accountability
 - Support external oversight
 - Board should instill and review code of ethical conduct; perform its oversight function in the interests of the public and consistent with authority mission; and accurately disclose the financial condition, risks, liabilities and management practices of the authority in regular public reports
- Fiduciary Duty
 - Derived from and governed by agency mission
 - Duties of Loyalty and Care

Corporate Governance in the Public Authority Context – Elements – (cont'd)

- **Board Independence and Accountability**
 - Obligation to become knowledgeable about agency mission, purpose, functions, responsibilities and statutory duties, and when necessary, to make reasonable inquiry of management and others with knowledge and expertise
 - Exercise independent judgment
- **Separate Oversight and Executive Management Functions**
 - Monitoring activities of management and staff
 - Scrutinizing information provided by subordinates and consultants
 - Providing policy direction in light of mission, statutory/regulatory requirements and public policy objectives of the States

Corporate Trends

- Recent Amendments to U.S. Sentencing Guidelines for Effective Compliance and Ethics Programs
 - Enhanced Autonomy for Compliance Personnel
 - Effective Response to Detected Criminal Conduct
 - No Requirements for Document Retention Policies
- Dodd-Frank Act
 - Proposed Rule on Registration of Municipal Advisors
 - Whistleblower Incentives and Protections – SEC Adoption of Final Rules
 - New Governance Requirements for Financial Companies that may influence “Best Practices”
- NACD Blue Ribbon Commission on Risk Governance

NACD – Ten Principles of Effective Risk Oversight

- Understand the business and the key drivers of success.
- Assess the Risk Appetite Inherent in the Company's Strategy
- Define the Role of the Full Board and its Standing Committees with Regard to Risk Oversight –the full board should have primary responsibility for risk oversight, with the standing committee's supporting the board by addressing the risks inherent in their respective areas of oversight
- Consider Whether the Company's Risk Management System – Including People and Processes – Is Appropriate and has Sufficient Resources
- Work with Management to Understand and Agree on the Types (and Format) of Risk Information the Board Requires
- Make Sure the Board Encourages Dynamic Interaction – and Probing, Constructive Dialogue – Between Management and the Board
- Closely Monitor the Organization's Tone at the Top, Culture, and Incentive Structure
- Monitor Critical Alignments – Of Strategy, Risk, Controls, Compliance, Incentives, and People
- Consider Emerging and Collateral Risks: What's Around the Next Corner? What Might be Off to the Side?
- Periodically Assess the Board's Risk Oversight Processes: Do they Enable the Board to Achieve its Risk Oversight Objectives?

NACD Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies

- Board Responsibility for Governance
- Corporate Governance Transparency
- Director Competency and Commitment
- Board Accountability & Objectivity
- Independent Board Leadership
- Integrity, Ethics & Responsibility
- Attention to Information, Agenda & Strategy
- Protection Against Board Entrenchment
- Shareholder Input in Director Selection
- Shareholder Communications