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

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