

**The Port Authority of New York and New Jersey  
Committee on Governance and Ethics Meeting Transcripts  
October 21, 2010**

[Chair H. Silverman] Today's meeting of the Governance and Ethics committee is being held entirely in public session. In addition, the meeting is being broadcast live on the Port Authority's website for those interested in viewing today's proceedings via the Internet. We have 3 items for discussion, and Howard, you're going to lead all 3, I believe.

[H. Kadin] Thank you very much and good morning, Mr. Chairman, members of the committee, ladies and gentlemen. If I could have the first slide, please. Today I would like to speak with you in connection with the committee's oversight responsibilities under Article VIII G of the Port Authority's bylaws. With respect to compliance on certain ethics and legal regulatory requirements, specifically financial disclosure and ethics training, a brief review of New York and New Jersey ethical standards, and adequacy of the Commissioners' Code of Ethics, along with a quick review of some governance and ethics trends in the two states, as well as a quick survey of some corporate trends and best practices. Next slide, please. Now, as you know, all Port Authority Commissioners are required under the Commissioners' Code of Ethics on an annual basis and periodically throughout the year to provide General Counsel with financial information, consistent in format and substance with the information required to be filed by unpaid officers who hold policy-making positions in their state of appointment. Accordingly, commissioners are requested to provide General Counsel with information on their business, corporate, and other involvements, as well as any substantial interests they may have. Now, in New Jersey, Governor Christie, on April 27th, earlier this year, continued the financial disclosure process for certain New Jersey public officials, including the New Jersey commissioners on substantially the same basis as Executive Order No. 1 of Governor Corzine, which has been rescinded. Executive Order 24 does not require any new actions by the New Jersey commissioners or impose any new additional limitations on their activities. Under the executive order, New Jersey commissioners were required to file their financial disclosure statement with the state Ethics Commission within 120 days of the executive order's effective date, and I believe that was August 25th. And they were required to file on each May 15th thereafter. I'm pleased to say that all New Jersey commissioners have met the filing disclosure requirement for 2010. Next slide, please. Now, with respect to ethics training, all commissioners in New York and New Jersey received briefing materials regarding general ethical considerations and applicable statutes and related material. There is a New Jersey statutory requirement in the Conflicts of Interest law that certain New Jersey state officers and employees are required to complete a training program on ethical standards. This training is also relevant for New Jersey commissioners, who are required under the Code of Ethics for Port Authority commissioners, adopted by the Board on February 19th of 2009, to comply with all applicable laws, rules, and regulations applicable to the commissioner as an unsalaried public officer from his or her state of appointment. In the case of New Jersey commissioners, questions with respect to their actions are generally reviewed in the context of provisions of the New Jersey Conflicts of Interest law, applicable to special state officers. The New Jersey financial disclosure statement form for public officers requires filers to indicate if they've completed ethics training. All New Jersey commissioners have received New Jersey ethics training. If I could have the next slide, please. This slide presents a very brief overview of a comparison of New York and New Jersey ethics laws. Although the precise language in the applicable Conflicts of Interest laws of the two states differs, the essence of what constitutes prohibitive activity and the rationale over such prohibitions is consistent.

The public officer should avoid participation in transactions involving the officer's agency under circumstances where the officer has an interest or involvement that is in conflict with the proper discharge of official duties. The public officer should not use or attempt to use an official position to secure unwarranted privileges or advantages for himself, herself, or others. The public officer should not disclose confidential information gained by reason of his or her position. The public officer should not act in such a way as to reasonably create an appearance of impropriety. And generally speaking, underlying all of these prohibitions is the principle that public officers should be independent and objective in the exercise of their official duties in the public interest. If I could have the next slide, please. In reviewing compliance with ethical standards as applicable to the commissioners, the Commissioners' Code, through its incorporation of applicable laws, rules, and regulations, its notification requirement, with respect to conflict issues and contacts with lobbyists regarding procurements, and its financial disclosure requirement, addresses each of the following considerations: What standards apply, what risks are addressed, are third-party actions addressed? Is the Code understood and accepted by those covered? Now, the Port Authority has a traditional and long-standing commitment to the highest standards of integrity in the public service. With respect to New York commissioners, we look to Section 74 of the New York Public Officers Law and Section 410 of the New York Education Law. And I should point out that Section 73 of the Public Officers Law also provides guidance. As previously stated, for New Jersey commissioners, we look to the New Jersey Conflicts of Interest Law. I should add, at this point, that a discussion regarding the adequacy of the Code of Ethics and Financial Disclosure for staff is presently expected to be on the agenda for the next meeting of the committee, which I believe is scheduled for December of this year. Next slide, please. Now, with respect to trends in the state of New York, the 2009 Public Authority's Reform Act was signed into law by Governor Paterson in December of last year and took effect this past March. The 2009 act builds on the framework established by the Public Authorities Accountability Act of 2005, which was a comprehensive set of reforms designed to help insure more stringent and uniform standards of transparency, accountability, and professionalism, with respect to New York public authorities. And the 2009 act provides enforcement language to help insure compliance, improve board member performance, and strengthen the oversight role of an independent authority's budget office. I should note as an aside, that at the outset, Port Authority practices and policies predate this particular reform legislation and address the concerns that underlie it. Directors are required to acknowledge, under the 2009 New York legislation, that they have a fiduciary obligation to their particular authority to act in its best interests and those of the people of the state served by that particular authority to perform the duties and responsibilities to the best of their abilities, in good faith, with proper diligence and care consistent with the enabling statute, the particular authority's mission, its bylaws, and the New York State law. Directors have to indicate an understanding of the obligation to become knowledgeable about their authority's mission, purpose, functions, responsibilities, and statutory duties and where necessary, to make reasonable inquiries of management and others with knowledge and expertise, so as to make informed decisions. Of course, they agree to exercise independent judgment on all matters before their particular board. They agree to participate in training sessions, attend board and committee meetings, and engage fully in board and committee decision making. They further agree, of course, not to disclose confidential information and they are provided--well, let me back up and say that as far as the Port Authority is concerned, our commissioners are provided with substantial briefing materials upon joining the board, which familiarize them with the Port Authority's business, its governance, and their responsibilities. The Port Authority's commissioners' personal activities, as indicated before in the discussion on financial disclosure, are screened by General Counsel's office through that disclosure requirement and through questions raised directly by commissioners to insure commissioner independence, objectivity, and freedom from conflict of interest

and the appearance of such conflict. Now, with respect to annual self-evaluation, which is another requirement of the New York legislation, according to the legislation, it is to be measured against the Authority's mission statement, goals, and values, and the expectation of those served by the Authority and New York State. I should point out that the Port Authority's bylaws mandate annual review and evaluation of board performance and committee effectiveness. Debt-issuing authorities, under the 2009 New York legislation, are required to have a finance committee, among other things, to review proposed issuances, make recommendations to the full board with respect to the nature and appropriate level of debt, and regarding appointment and compensation of bond counsel financial advisors and underwriting firms. As you well know, the Port Authority Board has had a finance committee literally for decades. As to new reporting responsibilities, in addition to providing the Authority's budget office with mission statements and performance reports, there is information required by the various New York authorities, with respect to organizational structure, composition of committees, background information on the formation of the Authority, professional experience of board members and management. And the Port Authority, of course, is statutorily required to allow the respective states to examine its accounts and books, and Port Authority's Minutes are sent to the governors of the two states, who have authority to veto actions recited in such Minutes. If I could have the next slide, please. With respect to New Jersey trends, as previously mentioned, Governor Christie promulgated Executive Order No. 24 in April of this past year. This is an example of his commitment to maintaining high standards of integrity and transparency in connection with the operation of government. This is a commitment that the Port Authority shares and has had for many years. In terms of governance, one priority of the current administration in Trenton is transparency, including financial transparency. And accordingly, Governor Christie's Executive Order No. 8 mandated, among other things, publication of regular reports on state expenditures and revenue, and the establishment of a website to provide a central location for commonly-sought documents related to state finances. Several guiding principles associated with this initiative are that the information should be easy to locate, the data should be user-friendly and make meaningful comparisons, and public documents should be available electronically. The Port Authority, of course, as you know, Commissioners, has undertaken a number of actions to promote greater transparency and accountability in its dealings and communications with the public, including revisions of the Agency's Open Meetings policy, amending and restating the bylaws, and by making certain changes to the Agency's policy and procedure relating to Freedom of Information to provide open, timely, and uninhibited access to the Agency's public records. Now, with respect to corporate trends, I can tell you that earlier this year in the spring, the United States Sentencing Commission approved some significant changes to the federal sentencing guidelines, which, as you know, applied to organizations convicted of criminal offenses. These amendments affect the requirement for being able to show that you have established an effective compliance program as a means of mitigating institutional punishment in the wake of criminal conduct. These proposed amendments, barring congressional rejection or amendment, will take effect this November 1st. The proposed amendments expand the availability of sentencing benefits for organizations that provide a direct communication channel between compliance personnel and the organization's governing authority, including expressed authority for the individual or individuals with operational responsibility for the compliance and ethics program to communicate personally with the governing authority. This personal communication must occur promptly on matters involving actual or potential criminal conduct, and no less than annually, with respect to implementation and effectiveness of the compliance and ethics program. I would take this opportunity to say that at the next meeting of this committee-- again, presently scheduled for December-- I believe the Office of Inspector General will provide you with a report on OIG's independence and its freedom from interference in the conduct of its responsibilities. The sentencing guideline amendments clarify that to qualify as having an effective

compliance and ethics program, an organization must respond to detected criminal conduct by taking reasonable steps to remedy the harm caused by that conduct and appropriate measures to prevent further similar criminal conduct in the future, including assessments of the compliance program and modifications, as necessary to insure effectiveness. Reasonable remedial steps made, but are not required required to include restitution, self-reporting, and cooperation with federal authorities. As to prevention, it is interesting to note that the commission rejected a proposal mandating the retention of an independent monitor. And finally, the commission declined to adopt or propose an amendment focusing on the role of document retention policies in an effective compliance program. I'd like to talk a little bit about the Dodd-Frank Wall Street Reform and Consumer Protection Act, which vastly expanded the SEC's whistle-blower reward program. The existing program was limited to insider trading cases, and capped rewards at 10 percent of the funds collected as sanctions. The new expanded program provides for a greater incentive of a reward between 10 and 30 percent of what has been collected of monetary sanctions imposed for a greater range of SEC enforcement activity. Now, the Dodd-Frank Act also requires publicly-traded financial companies supervised by the Board of Governors of the Fed, and publicly traded bank holding companies with a total consolidated assets of \$10 billion or more, to set up risk committees responsible for the oversight of enterprise risk management practices. Each risk committee must have at least one "risk management expert" defined to mean a person having experience in identifying, assessing, and managing risk exposures of large, complex firms. As we look briefly at the National Association of Corporate Directors Effective Risk Oversight principles, I'd like also to mention to the committee members that at the next scheduled meeting of the committee, it is my understanding that there will be a briefing and an update on the Port Authority's Enterprise Risk Management program. Members of the committee will recall that the committee received a debriefing on this last year. And, as you look at these principles of effective risk oversight, I think the important takeaway here is that these principles represent a distillation of common sense practices that responsible boards, such as the Port Authority's, would, of course, follow. And I'm not going to recite them. (laughing) And finally, with regard to best practices, you have the NACD Key Agreed Principles to Strengthen Corporate Governance for Publicly Traded Companies. Note that in each case, the principle relates to formulation and design of appropriate governing structures and practices. And, again, this is very common sense and the kind of thing that responsible boards, such as the Port Authority's, would, as a matter of course, do. Thank you, Commissioners.

[Chair H. Silverman] Are there any questions?

[Chair H. Silverman] I actually have one. Do we--?

[Chair H. Silverman] I'm sorry, did I interrupt you?

[Chair H. Silverman] Have we detected any breach of our policies, in terms of compliance and ethics policies? Have there been any breaches? Because I don't recall that you have reported any to us.

[H. Kadin] With respect to...staff, there are occasional issues under the staff's code of ethics and financial disclosure. And I deal with those as an attorney designated under the code of ethics appointed by General Counsel. We have a Port Authority ethics board and also a separate one for PATH. And when these matters are disclosed, the employee is informed, and the code requires that I let the employee know and work to ameliorate the situation, as necessary. The Ethics Board oversees this process as well.

[Chair H. Silverman] Thank you. Tony?

[Vice-Chair A. Coscia] A couple of things. One is that I know the commissioners go through respective training requirements under the individual state laws. Do we have any kind of a training process or a sort of a refresher process for commissioners, relative to Port Authority standards for ethical conduct and conflict of interest? I mean--I know--we get written materials, but is there any sort of thought, or have we in the past, ever had sessions on some basis, whether it is every other year or every year, etcetera, so that individual commissioner's understandings of their requirements don't grow stale?

[H. Kadin] I believe that there have been some briefing sessions in the past. I don't know that there is a regular schedule for providing such briefings. And as commissioners come up with situations that concern them, I know that they have, from time to time, consulted General Counsel, who has provided guidance to them.

[Vice-chair A. Coscia] I think it might be helpful to consider. And certainly this is a decision that the board should make collectively, but it would be helpful to get your input on this, and that, at some regular interval, there will be sessions available for commissioners to be brought sort of up to speed on the various requirements and standards that they're expected to adhere to, not for those things that are obvious, but those things that maybe are a little bit more subtle. And since the composition of the board changes from time to time, everyone gets a briefing when they join, but I think those sort of regular refreshers on some level would be helpful in terms of giving everyone a better understanding. Those on this committee, I think, see a lot of it because we participate in this committee, but there are those who are not on this committee who don't actually see this, so that would not be a bad idea. It's going to be a little bit redundant of what people are getting in their individual ethics training sessions at the state level, but I do think that there is a gap between what the PA standards provide for and what the individual state standards provide for.

[D. Buchbinder] There actually was a point that we were considering putting a program in place with the New Jersey commissioners because it was an easy way for the New Jersey commissioners to come up to speed and satisfy the state requirements. And the state ethics commissioner gave us the final approval to put a web program in place within the given year. As Howard said, most of this is handled one-on-one basis because I spend a fair amount of time, as you well know, in dialogue with the commissioners over there on typical issues and other trite issues as well. It doesn't hurt to centralize it.

[Vice-chair A. Coscia] We could certainly do it on Board days, and it doesn't have to be longer than necessary, but I think keeping it in mind is probably a healthy thing. The other--

[D. Buchbinder] We're also going to do a fairly frequently publication of our treasurer's manual as a refreshers course.

[Vice-chair A. Coscia] Yeah, I noticed that. I noticed that. The other question I had relative to Dodd-Frank is whether or not-- whether there were any specific recommendations that were being made, relative to requirements that we should impose on ourselves, notwithstanding the fact that we're obviously not subject to the jurisdiction of Dodd-Frank. Because we issue securities in such a high level, are there things that we're not doing that Dodd-Frank sort of highlights that we ought to consider potentially adopting?

[D. Buchbinder] Actually, the fact of the matter, on most of what Howard had up on the board, up on the slides, we've been ahead of the curve. We are very focused on this. Thank you--and really much of the common sense type of ethics requirements that are being put into place on a formal basis, the Port Authority's board has had in place for decades. This is inside the Port Authority's DNA and the Port Authority's culture. The reception we have in the capital markets, I think, is a demonstration of that confidence in Port Authority processes, whether they're on an audit process or a financial review process or on a board governance process. So it's a good place to be to be able to say that everything we've seen does not come up with anything we haven't thought of and that presently is not in place.

[Vice-Chair A. Coscia] That's good. And then the only final question or comment I had is that--and I know we're going to receive your presentation at our next meeting from the Inspector General--but it is maybe not expressly stated in your comments, but the Inspector General's jurisdiction clearly extends to commissioners, without equivocation, as far as I understand.

[D. Buchbinder] Yes, and in fact, in the last bylaws restatement, we made it clear that independence of the Inspector General's office was something that was paramount, and this committee is vested with the responsibility of insuring that independence.

[Vice-Chair A. Coscia] I know there is a number of us who feel very strongly about that subject, so I think it's important. Yeah, thank you. That's all I had, Chairman.

[Chair H. Silverman] Okay, any other questions? Jinny? Jeff? No? All right. Then, if not, we're adjourned. Thank you.