

**Port Authority of New York and New Jersey
Committee on Governance and Ethics Meeting Transcripts
November 19, 2013**

[Chair W.P. Schuber] Let me call to order this public session of the Committee of Governance and Ethics. The first portion of today's meeting on Governance and Ethics is being held in public session, after which the Committee will meet in executive session to discuss matters related to personnel and personnel procedures and matters related to ongoing reviews of contracts or proposals. In addition, the public portion of this meeting is being broadcast live on the Port Authority's website for those interested in viewing today's proceedings via the Internet. At this point, I would ask the Board Secretary to advise the Committee of any Commissioner recusals on items before the Committee of today's session.

[K. Eastman] Sure. Thank you, Mr. Chairman. There being no action required of the Board at this meeting, there are no recusals to note.

[Chair W.P. Schuber] Thank you very much. For discussion, we have three items here in public session. We have Howard Kadin with us, and Howard the first item is the review of statutory requirements on qualifications for prospective appointments to the Board

[H. Kadin] Thank you and good morning, Mr. Chairman, members of the Committee, Commissioner Lipper, ladies and gentleman. Today I'd like to speak with you about two of the governance responsibilities of this Committee under its charter. The first of those responsibilities relates to the provision of assistance in the identification of qualifications for prospective appointments to the Board, and the second governance responsibility that I'll speak to you today about concerns the review and evaluation of performance and effectiveness of the Board and its Committees. In examining the statutory requirements that apply to Commissioners with respect to Board appointments, we'll look at residency requirements and also certain requirements with respect to terms of office. The By-Laws of the Port Authority memorialize a fiduciary duty owed to the Port Authority by Commissioners, and a By-Laws requirement relates to the composition of the Audit Committee. We'll also consider certain additional qualification criteria. With respect to review and evaluation of Board and Committee performance and effectiveness, we'll see that Board assessments are now considered to be corporate governance best practice. It's been said that Board effectiveness and credibility depend in part on a process of regular Board self-evaluation. The practice of Board self-evaluation is now ongoing, not only in the private sector, but also in the not-for-profit sector, and certain government boards, are engaging in that as well, Mr. Chairman. And there are a number of considerations with respect to the process by which such evaluations are undertaken. Planning considerations include the level of detail, key focus areas and goals, methodology, confidentiality, timing, and presentation of findings. Now with respect to the statutory requirements, you see we have residency requirements. The Board consists of six commissioners. Of twelve commissioners, six resident commissioners for each state. Resident voters: four of those New York Commissioners have to be resident voters of New York City, and four of the New Jersey Commissioners are to be resident voters of the New Jersey portion of the Port District. A six-year term allows for a Commissioner to become comfortable and get a good grounding in the business of the agency. It also means that a Commissioner appointed to a full term will have a tenure that exceeds the term of the Governor

who appointed him and the State Senators who consented to that appointment. On the other hand, the process of allowing holdovers cuts into the term of successors and may create at least an appearance that members whose terms are shorter than a full term or are holdovers may be somewhat less independent. With respect to hearing and removal upon charges, in New Jersey, that's done by the State Senate. In New York, hearing and removal is by the Governor. Now according to our By-Laws under Article III A, Port Authority Commissioners must act in a fiduciary capacity and owe a duty of loyalty and care to the agency. This means among other things they should avoid conflicts of interest, and the appearance of a conflict and avoid conflicts of a personal, financial, or professional nature that could inhibit them from performing their duties in good faith and with due diligence and care. They should not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of their duties in the public interest. They must exercise independent judgment on all matters that come before the Board. They're obligated to act in the best interest of the Port Authority and the public that it serves. They also have a duty of care, an obligation to become knowledgeable about the mission, purpose, finances, functions, responsibilities, and statutory duties of the agency, and when Commissioners believe it's necessary, Mr. Chairman, they have a responsibility to make reasonable inquiry of management and others who have expertise and knowledge so that the Commissioners can make informed decisions. They need, of course, to attend Board and Committee meetings and to engage fully in the Board and Committee decision making process. We will also see shortly how the fiduciary duty Commissioners dovetails with considerations of requisite characteristics for prospective appointments to the Board. The By-Law requirements for at least one member of the Audit Committee to possess a high level of financial expertise and by certain best practices that evolve from the Sarbanes–Oxley Act disclosure requirements. The requirement with respect to financial expertise of a member of the Audit Committee, may be demonstrated by a number of factors, including general understanding of GAAP, or generally accepted accounting principles, the preparation of auditing financial statements of amenities comparable to the agency, the application of such principles in connection with accounting for estimates, accruals, and reserves, internal accounting controls, and finally, a general understanding of Audit Committee functions. As a general matter, the Committee and the Board may wish to recommend for consideration by the Governors other criteria for requisite skills and characteristics of new Board members. Factors to be considered would include whether a potential Commissioner would be able to act on behalf of the Port Authority and its related entities without a conflict of interest, would be able to work and promote a collegial environment, would have sufficient time and willingness to fulfill the substantial duties and obligations and responsibilities of a Commissioner. Whether an individual has demonstrated the high level of character and integrity expected of the agency, whether an individual possesses broad professional leadership experience and skill, the kind that would be necessary to effectively respond to the complex issues that face somebody who is the steward of a bi-State agency, with over two dozen facilities encompassing an area of about 1,500 square miles, Mr. Chairman, with an annual expenditure in 2012 of about \$5.9 billion. Finally, another qualification to consider would be the ability to apply sound and independent business and policy judgment. Of course, such factors should be considered in the context of the needs of the agency, taking into account the composition of the Board as a whole as it currently exists, and the terms of its current members. I have some statistics with regard to a National Association of Corporate Directors Survey. They do governance surveys from time to time, and that's usually in the public

sector, public companies, and among the director's skills that survey respondents found most important were knowledge of the company's industry, 37 percent, experience at long-range strategic planning, and successful experience as a corporate director. In terms of important personal skills, the survey indicated that respondents felt that personal integrity was by far the most important, followed by track record in the field, and intelligence. Now the Committee also has responsibilities under its Charter with respect to review and evaluation of Board and Committee performance and effectiveness. Since the establishment of the Committee in 2007, Mr. Chairman, staff has and will continue to assist the Committee in carrying out its responsibility to review and evaluate such performance by providing annual analyses and reports pertaining to the Board and each of the Committee's performance throughout the year, and this typically includes such information as how many times the committee has met during the year, the topics reviewed and discussed, and actions taken. It should be noted that the requirement in the Port Authority's By-Laws that each Board Committee with approval from the Board adopt a written formal charter stating its roles and responsibilities and also the obligation of each Committee as set forth in the By-Laws to review and re-assess its written formal charter from time to time. This has resulted in the revision of certain Committee Charters, and that effectively reflects a type of Board self-assessment, also. The number of boards engaging in self-assessment has increased dramatically in the last ten years. Going back to some survey research, a survey in 2002 conducted by PricewaterhouseCoopers and Corporate Board Member Magazine found that only about one third of United States respondents said their board has performed regular formal assessments. By 2007, a mere five years later, however, the number of boards performing full assessments rose to 88 percent. An NACD survey in 2012, last year showed that a full 92 percent of boards conducted full board evaluations. Eighty-three percent of boards also conduct committee evaluations, and almost half conduct individual director evaluations. There are a number of reasons for this increase. I think one was that in 2004, the New York Stock Exchange required annual assessments for the boards and major committees of listed companies, and Mr. Chairman, in 2009, the SEC promulgated a rule regarding proxy disclosure enhancements, under which boards were required to provide information regarding directors' individual skills, diversity, and board composition. It's not only the United States that this trend is occurring. Thomson has done some survey research in other countries, suggesting that in Sweden, the United Kingdom, and the Netherlands also, the vast majority of boards are also doing regular assessments. The trend also carries over into the non-profit sector. A 2012 Board Source Non-Profit Governance Index Survey found that the majority of non-profit respondent boards had conducted a formal written board evaluation.

[Chair W.P. Schuber] Howard, does your information show how many of these boards do this as a regular course, I'm not sure if this is a statistic that's actually kept, but it may be; how many do board retreats?

[H. Kadin] I don't have any information on that. I don't know.

[Chair W. P. Schuber] Something we talk about here— again, time is obviously valuable for everybody, but take us to the fact that the Board has changed a lot over the last two to three years. That's got to be something we all consider, quite frankly.

[H. Kadin] And now, oh, I'm sorry!

[Chair W.P. Schuber] I wanted to put that out there.

[Comm. J. Moerdler] We actually did talk about (inaudible) at some point. I'm not sure if he was talking about a pattern. Oh, I know what we talked about. We talked about doing an Audit Committee retreat.

[Chair W.P. Schuber] I don't want to plague everybody with extra duties here, quite frankly, but having said that, it might be said that we need to look at this, this committee should maybe look at is something that might be a good, and I'll talk to the Chairman about it, something that might be a good idea after the first of the year. I'm sorry. Go ahead.

[H. Kadin] No, not at all, Mr. Chairman. In fact, one of the considerations in the planning for the evaluation process is the question of timing, and part of that is you all are busy and how much time is going to be involved in engaging in the review process and how it's going to take place. So here we have a key question, which is how is the Board and how are its Committees going to contribute to the effectiveness of the organization? A key governance question and an old saying is it's hard to know where you want to go if you don't know where you are, and that's part of what the self-assessment process relates to and answering this question, Mr. Chairman, can help the board to determine how it should govern in the best interest of the agency, and in that process, help to define the agency's identity, what it stands for, what it wants to accomplish, and how it's going to go about doing that. So self-assessment allows the Board to review and think about what it does, what it doesn't do, and what it should be doing to fulfill its oversight responsibilities in the best manner. One of the reasons self-assessment is good and we can make a case for it is it helps promote good governance. With self-assessment and benchmarking, it's easier to gauge where the organization is engaging in governance best practices. It can help improve performance. When the board implements self-assessment, it's leading by example and sending a clear signal through the organization that Board members are going to hold themselves accountable as well as management, and that the board expects continued improvement in performance from everyone. It can improve the bottom line, according to Thomson Financial, Global Investor did a study that suggested that 70 percent of institutional investors describe corporate governance of their portfolio companies as important. Doing self-assessments, Mr. Chairman, may be able to reduce risk, because it helps the board to evaluate its level of comfort with the systems in place to monitor compliance with rules, regulations, and procedures that the Port Authority has to follow. This process of assessment can also strengthen the partnership between management and the Board. If the assessment process reveals certain obstacles that exist between management and the Board, there's an opportunity to address and surmount those obstacles. It could also allow the Board to help set and manage expectations, define what the Board wants for management with respect to information included in advance Board packages, the format and content of meetings, number of meetings, the board's role in development of business strategy and management development. Boards have been found to be acting on issues that are unearthed during the evaluation process. According to a study conducted just this year by Pricewaterhousecooper's their annual corporate governance survey, they found that 57 percent of boards take action as a result of self-evaluations. Most common changes that were taken as a result of those self-evaluations were seeking additional expertise to join the board and changing board committee assignments and composition. When it comes to doing these assessments, how do we go about it? There are three typical approaches when one's going to consider doing a self-

assessment. You can do surveys/questionnaires. You can do one-on-one interviews. You can also do facilitated group self-assessments. Under the survey approach, board members complete a written questionnaire, ask them to rate the board's performance on a variety of dimensions using a numerical scale. Data from the survey is compiled and evaluated in a report analyzing the scores and also summaries of any write-in or narrative questions that the questionnaire may have. This report forms the basis for a working session where commissioners will discuss feedback, identify and prioritize areas for improvement, consider alternatives, and determine the best course. This can perform a valuable function, because by using questionnaires, you can track progress and compare results over time if you're using a standardized kind of questionnaire format. It also can ensure anonymity of participants and allow for flexibility in terms of commissioner's time in taking care of this task in terms of their convenience. Some boards also use web-based portals as a security measure in answering these questionnaires. In terms of individual confidential interviews, a list of interview questions is distributed to the members in advance. The structured questions provide a uniform response framework but allow for in-depth insights and raising issues that are beyond the questions. Notes from the interviews are compiled and analyzed by key themes and summarized in a report, and then we continue to process that we discussed before in terms of working sessions, analyzing different items, prioritizing and determining what's the best course of action to take, and these interviews can also be designed to protect anonymity, especially if a third party conducts them. The group approach involves having a trained third-party facilitator come in and lead a group discussion, and this can involve more direct probing questions and full engagement. This kind of method works best in an environment where there's a high level of trust and openness among the members. So there are many available examples of board assessment tools. NACD, the National Association of Corporate Directors, has such, and also we have—the New York State Authorities Budget Office provides a tool, as well, because New York State agencies engage in this kind of self-assessment now. Some considerations to think about when planning such a thing will be who's going to conduct the assessment? Is it going to be internal, or are you going to have somebody external to the agency involved in doing it—a third party? What kind of level of detail are you going to go into? Is it going to be broad and general? Is it going to deal with specific topics or issues? Is it going to be some kind of combination of the two? What are you going to focus on? What are the goals that you hope to accomplish with the evaluation? This is going to help to identify what kind of performance measures you're going to use during the process to determine and measure how well the Board is performing in terms of its various functions. Also this will help in thinking about focus area and goals, what the composition of the questionnaire questions or the facilitated group discussion questions will be. Again, we've already discussed the different types of assessments that can be engaged in. One thing to look out for is that loosely structured ad-hoc kind of arrangements aren't necessarily likely to be as thorough and effective as more structured sorts of endeavors. An important consideration is confidentiality, and most experts recommend that the process and individual answers be kept confidential, and that these answers be kept anonymous. This facilitates candor. We've already discussed, Mr. Chairman, in terms of the question of possible retreat, the issue of timing, how much time should be allotted to the process, and this, of course, has to mesh with other board responsibilities. You all are busy people. Then the issue comes in terms of presenting the findings. Is that going to be a verbal presentation or a written one? In assessing committees, are we going to incorporate feedback from non members as well as members of the committees? So these are considerations that the Board may wish to look at as it decides whether and how to conduct evaluations. Thank you, Mr. Chairman.

[Chair W.P. Schuber] Howard, thank you. If I could just go back on the boards I've served on, retreats have been anywhere from a one-day to two-day thing, and the county used to do one a year with all directors, but it was a one-day event outside the facility. Again, I want to talk to the chairman. It might be appropriate for us, we've done Navigant. Navigant helped us to make our committee system much more robust. It might be time now to look at a and I know Jeff, refresh my recollection is correct that the audit committee had done that initially? It might be the appropriate time for us to look at a one-day event for the commissioners themselves, since we I guess about three quarters of the Board is kind of relatively new, so we'll see, but I appreciate your updating us and I will turn to the Commissioners to see if any of them would have any questions. Jeff?

[Comm. J. Moerdler] I think it's a terrific idea. The devil is in the details, and coordinating schedules will be difficult.

[Chair D. Samson] I'll come around the room. Rossana?

[Comm. R. Rosado] There could be a one-day session here at the Authority, and it doesn't have to.

[Chair D. Samson] Yeah, exactly.

[Comm. R. Rosado] It doesn't have to be Atlantic City.

[Chair D. Samson] No. They could use the business, but no. (laughter) I don't think that's something we would recommend! However, having said that, Rossana, any questions?

[Comm. R. Rosado] No, no. Thank you very much.

[Comm. B. Patterson] I presume, Mr. Chairman, that the report is going to be circulated amongst the members, the full Board members.

[Chair D. Samson]) I'm sorry. I didn't hear what you said.

[Comm. B. Patterson] I presume that the report, excellent report will be circulated amongst all of the members of the Board.

[Chair D. Samson] Yes. I think that'd be a good idea, Howard, if we could have that presentation to all the commissioners. Commissioner Patterson, thank you. Commissioner Lipper?

[Comm. K. Lipper] First of all, Howard, it was an excellent report. I echo Commissioner Patterson's comment. It was very comprehensive. I think it laid out the choices, my own self, I think you'll have a freer discussion if it's not a survey, a written survey initially. I think having a third party who's professional and reliable to maintain confidentiality lead a discussion could be useful. We could reflect on that, but it would be very good idea, I think, to have on this retreat an evaluation, self-evaluation by the Board and we might get a lot out of it.

[Chair W.P. Schuber] Ken, do you have any other questions for Howard?

[Comm. K. Lipper] No.

[Chair W.P. Schuber] Howard, thank you very, very much.

[H. Kadin] Thank you, Mr. Chairman.

[Chair W.P. Schuber] With that, I'll turn to welcome back Bob Van Etten. Bob, How are you feeling?

[R. Van Etten] Much better. Thank you, Commissioner. Acorns in your driveway on the way to work can do it every time. (laughter)

[Chair W.P. Schuber] Okay, Bob. You're up on the report on the inspector general's objectivity and independence, please.

[R. Van Etten] Good morning. Commissioners, as you're all aware, the inspector general of the Port Authority is charged with the responsibility of receiving and investigating where appropriate all complaints regarding wrong doings, fraud, waste, and abuse by commissioners, officers, and employees of the Port Authority, or third-party individuals or organizations doing business with the Port Authority. Under the general direction of the chairman and the executive director, consulting with the Board of Commissioners, the Audit Committee, the executive director and general council as appropriate. Pursuance of Section IV-1G of the Committee's charter, the Governance and Ethics Committee is responsible for ensuring that the Inspector General continues to be independent and free from interference in the conduct of the IG's responsibilities. During the last calendar year, I am pleased to report that the Office of Inspector General has remained independent from inappropriate influence, interference, or pressure from the Agency, as well as from any business or individuals we have investigated. In addition, the OIG has not encountered any difficulty working with staff or the Audit Committee. The IOG has enjoyed an excellent working relationship with the Audit Committee and keeps the Audit Committee apprised of all matters of significance on a regular basis. Thank you.

[Chair W.P. Schuber] Bob, let me just indicate again, sorry for your difficulties, and I hope you have a speedy recovery there. Secondly, I just want to congratulate you and the office, again, for the great work you've done during this last year, particularly, in keeping the board apprised and the various aspects of our oversight that you've undertaken by yourself and your office in a number of different areas, and we appreciate it very, very much. With that, I'll turn to the Commissioners and ask if any of them have any questions for Bob. Jeff?

[Comm. J. Moerdler] No.

[Comm. R. Rosado] No.

[Comm. B. Patterson] No.

[Comm. K. Lipper] No.

[Chair W.P. Schuber] Thank you, Bob.

[R. Van Etten] You're very welcome. Thank you.

[Chair W.P. Schuber] With that then, I will— this concludes the public portion of today's meeting. The Committee will now adjourn to executive session to discuss matters related to personnel and personnel procedures and matters related to ongoing reviews of contracts or proposals.