

# ***Governance and Ethics Committee***

October 7, 2013

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

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- Compliance with Legal and Regulatory Requirements
  - Financial Disclosure
  - Ethics Training
  - Fiduciary Duty
- NY/NJ and Corporate Trends and Best Practices

## *Financial Disclosure*

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- All Commissioners (NY and NJ) are required to provide General Counsel with financial information by the Commissioners' Code of Ethics
- All Commissioners have provided the required financial disclosure information

## *Ethics Training*

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- 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

## ***New York - Trends***

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- **Executive Order No. 106 (Governor Cuomo – 7/2/13) – Appointment of Commission to Investigate Public Corruption**
  - Management and affairs of the State Board of Elections
  - Regulation of Lobbying
  - Public Corruption, Conflicts of Interest and Ethics in State Government
- **Project Sunlight Database (established by Public Integrity Reform Act of 2011) goes “live”**
- **Enforcement of 2009 Public Authorities Reform Act and 2005 Public Authorities Accountability Act – Authorities Budget Office 2013 Annual Report – Recommendations – Board Member Term Limits and Enhanced Authority**

## *NJ - Trends*

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- NJ State Ethics Commission Rules – Readoption with Amendments (February 21, 2012)
  - Expansion of the definition of “relative” to include “civil union partner or domestic partner”
  - Clarification of concept of “involvement in a matter” re: recusals on official matters where State official had prior personal involvement
    - Supervisory responsibility
    - Providing input
    - Submitting reports
    - Signing contracts
    - Having access to confidential information
    - Substantially and directly involved in decision-making
  - Extension of prohibition on use of a State official’s title on behalf of a private organization for fundraising purposes to include promotional activities

# *Corporate Governance in the Public Authority Context - General*

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- 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*

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- 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 (now memorialized in PA By-Laws)
  - Derived from and governed by agency mission
  - Duties of Loyalty and Care



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

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- 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
  - “ \* \* \* Board members of state and local authorities shall \* \* \* perform each of their duties as board members \* \* \* in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public \* \* \* .” [N.Y. Pub. Auth. Law Sec. 2824(1)(g).]
- 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*

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- Workload and time commitment required for board service continues to increase
- Volume and complexity of information for directors to digest has increased
- Majority of large public companies in 2012 reported use of a formal overboarding policy
- Companies are developing a climate change strategy
- Recruiting and retaining a balanced board continues to be challenging
- Board use of technology is increasing; most companies do not have a formal social media policy
- Companies are elevating their focus on information security

## ***NACD – Ten Principles of Effective Risk Oversight***

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1. Understand the business and the key drivers of success.
2. Assess the Risk Appetite Inherent in the Company's Strategy
3. 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 committees' supporting the board by addressing the risks inherent in their respective areas of oversight
4. Consider Whether the Company's Risk Management System – Including People and Processes – Is Appropriate and has Sufficient Resources
5. Work with Management to Understand and Agree on the Types (and Format) of Risk Information the Board Requires
6. Make Sure the Board Encourages Dynamic Interaction – and Probing, Constructive Dialogue – Between Management and the Board
7. Closely Monitor the Organization's Tone at the Top, Culture, and Incentive Structure
8. Monitor Critical Alignments – Of Strategy, Risk, Controls, Compliance, Incentives, and People
9. Consider Emerging and Collateral Risks: What's Around the Next Corner? What Might be Off to the Side?
10. 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***

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- 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