



Report on Nonprofit Revitalization Released by Attorney General Eric T. Schneiderman

February 16, 2012

On February 16, 2012, New York Attorney General Eric T. Schneiderman released a report (the “Report”) drafted by the Leadership Committee for Nonprofit Revitalization (the “Committee”), setting forth the Committee’s proposals for reducing burdens on the nonprofit sector while strengthening governance and accountability.

The Committee was appointed by the Attorney General and its members are listed in the Report.¹ The Committee was tasked with presenting recommendations to the Attorney General focused on reducing regulatory burdens on nonprofits, modernizing nonprofit laws to eliminate outdated requirements, and enhancing board governance and effectiveness.

The Report’s recommendations are divided into three sections:

1. **Reducing Burdens on Nonprofits:** The first section of the Report includes proposals for ways to build better partnerships between government and nonprofits with a focus on state contracting processes and recommends modernizing laws and eliminating regulatory burdens in order to make New York State a more hospitable environment for nonprofits.
2. **Enhancing Governance and Maintaining Public Trust:** The second section includes proposals for new laws intended to provide guidance to nonprofit boards of directors in areas such as compensation, financial reporting and conflicts of interest and identifies potential solutions for improving board governance through director recruitment and education programs and adoption of voluntary best practices.
3. **The Path Forward:** The final section of the Report promotes an ongoing collaboration between the Office of the Attorney General and the nonprofit community and proposes that the next phase of the collaboration be the development of a vision and strategy plan for the nonprofit sector, titled “Nonprofit 2020: A Blueprint for the Future.”

The Attorney General has issued a press release indicating his intent to follow up on the Report by introducing The Nonprofit Revitalization Act, which would “enact a number of reforms, including (1) streamlining bureaucratic processes to expedite formation of nonprofits in New York and approval of key nonprofit transactions; (2) modernizing outdated requirements, such as permitting the use of technology to facilitate more efficient operations and reduce costs; (3) requiring that boards provide enhanced and independent oversight of executive

¹ Victoria B. Bjorklund, Partner and Head of the Exempt Organizations Group at Simpson Thacher & Bartlett LLP, is a member of the Committee.

compensation; (4) increasing board responsibilities to oversee financial audits; (5) enhancing the Attorney General's tools to police self-dealing and other forms of corruption; and (6) requiring that nonprofits adopt conflict-of-interest and whistleblower policies."

The Report has and is expected to continue to garner significant attention in the press and discussion in the nonprofit community. Coverage of the Report has focused on its recommendations regarding board of directors' oversight of executive compensation. In that connection, the Committee makes the following four recommendations:

1. **Require Independent Board Oversight over Executive Compensation:** The Committee recommends that New York law be amended to require that independent directors make an annual affirmative determination that compensation paid to the chief executive, as well as the chief financial officer and other key employees is reasonable, justified and commensurate with services provided. This function may be delegated to a board committee of independent directors. The Committee also recommends that New York law be amended to set forth the criteria for independence. Interested individuals should be deemed presumptively conflicted and their participation in the compensation process subjected to the nonprofit's conflict-of-interest policies.
2. **Set Forth Criteria for Board Review:** The Committee recommends that boards be required to consider total compensation, including all perquisites and benefits; relevant comparability data appropriate to the size and type of nonprofit; employees' qualifications and performance; payments or other benefits from related entities; and budgetary challenges and other issues affecting the nonprofit's overall financial position.
3. **Require Contemporaneous Documentation of Board Action:** The Committee recommends that New York law be amended to require contemporaneous documentation of the justifications for and reasonableness of executive compensation.
4. **Require Oversight of Compensation Consultants:** The Committee recommends that nonprofits that utilize outside compensation consultants be required to adopt policies and procedures governing consultants' selection and retention and oversight of their work. The Committee further recommends that boards be required to affirm compensation consultants' qualifications and independence, which should be defined by New York statute.

The Report can be found at

[http://www.ag.ny.gov/media_center/2012/feb/NP%20Leadership%20Committee%20Report%20\(2-16-12\).pdf](http://www.ag.ny.gov/media_center/2012/feb/NP%20Leadership%20Committee%20Report%20(2-16-12).pdf).

The Attorney General's press release can be found at

http://www.ag.ny.gov/media_center/2012/feb/feb16a_12.html.

* * *

For more information, please contact one of the following members of Simpson Thacher & Bartlett LLP's Exempt Organizations Group:

Victoria B. Bjorklund
(212) 455-2875
vbjorklund@stblaw.com

Jennifer L. Franklin
(212) 455-3597
jfranklin@stblaw.com

David A. Shevlin
(212) 455-3682
dshevlin@stblaw.com

Jillian P. Diamant
(212) 455-3303
jillian.diamant@stblaw.com

Jennifer I. Reynoso
(212) 455-2287
jreynoso@stblaw.com

* * *

This memorandum is for general informational purposes and should not be regarded as legal advice. Furthermore, the information contained in this memorandum does not represent, and should not be regarded as, the view of any particular client of Simpson Thacher & Bartlett LLP. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as additional memoranda, can be obtained from our website, www.simpsonthacher.com.

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication.

UNITED STATES

New York

425 Lexington Avenue
New York, NY 10017-3954
+1-212-455-2000

Houston

2 Houston Center – Suite 1475
Houston, TX 77010
+1-713-821-5650

Los Angeles

1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto

2550 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.

1155 F Street, N.W.
Washington, D.C. 20004
+1-202-636-5500

EUROPE

London

CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing

3919 China World Tower
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong

ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Tokyo

Ark Mori Building
12-32, Akasaka 1-Chome
Minato-Ku, Tokyo 107-6037
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo

Av. Presidente Juscelino Kubitschek, 1455
12th Floor, Suite 121
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000