

ADVISORY

02/07/14

Contact: **Louis Vlahos**
Tax Partner
lvlahos@farrellfritz.com
516.227.0639

New York Nonprofit Revitalization Act of 2013 – What NFPs Need to Know

The NY Nonprofit Revitalization Act of 2013 enacted some major changes to the rules governing not-for-profits (“NFPs”) in New York. These should not represent a significant compliance burden for larger NFPs, as most are probably already in substantial compliance with the legislation.

That being said, NY NFPs need to be familiar, and in compliance, with the newly-enacted provisions, most of which go into effect on July 1, 2014. The following highlights the major provisions:

Provisions Aimed at Maintaining Public Trust

- ☛ Every NFP shall adopt a conflict of interest policy. Specific provisions are required to be included therein; if an NFP already has a conflicts policy pursuant to federal, state or local law that is substantially consistent with those provisions, it shall be deemed to be in compliance.
- ☛ No NFP shall enter into a related party transaction unless the transaction is determined by the board to be fair, reasonable, and in the NFP's best interest. Any director, officer or key employee who has an interest in such a transaction must disclose the material facts; no related party may participate in the deliberation and voting; in the case of a charitable corporation, the board shall consider alternative transactions to the extent available, and it shall contemporaneously document the basis for its approval. The AG is empowered to redress any violations, including by injunction or rescission.
- ☛ An NFP with at least 20 employees and more than \$1 million in annual revenue shall adopt a whistleblower policy to protect persons who report improper conduct from retaliation. Specific provisions are required to be included.
- ☛ Any NFP that is required to file an independent CPA's audit report with the AG must have an audit committee comprised solely of independent directors to oversee the accounting and financial reporting processes. The committee shall annually retain, or renew the retention of, an independent auditor. The committee shall review the results of the audit and discuss certain items with the auditor. When the NFP had, in the prior fiscal year or expects to have in the current year, revenue in excess of \$1 million, the committee shall review with the auditor the scope and planning of

ADVISORY

02/07/14

Contact: **Louis Vlahos**
Tax Partner
lvlahos@farrellfritz.com
516.227.0639

the audit prior to its commencement; it shall annually consider the performance and independence of the auditor; and it shall report on the committee's activities to the board.

- ☛ Charities registered with the AG's office that receive annual gross revenue in excess of \$500,000 must file an annual written financial report, including an independent CPA's audit report. Charities with annual gross revenue of between \$250,000 and \$500,000 must file a financial report that includes an independent CPA's review report. (These filing thresholds will be increased on July 1, 2017 and again on July 1, 2021).

Governance and Committees

- ☛ The board or the audit committee shall oversee the adoption of, and compliance with, the conflict of interest policy and any whistleblower policy.
- ☛ NFPs may have committees of the board and committees of the corporation. The characterization of committees as standing or special committees has been eliminated. Committees of the corporation have no authority to bind the board.
- ☛ While reasonable compensation may be paid to a director or officer for services rendered, no person who may benefit from such compensation may be present at, or otherwise participate in, any deliberation or vote concerning the compensation.
- ☛ The Chair or President of the board cannot be an employee of the NFP.

Notices of Meetings, Proxies & Action

- ☛ Notices of member meetings may be given by fax or email, provided that the notice is also posted on the NFP's website home page from the date of notice publication through the date of the meeting. A number of mechanical rules are provided to facilitate the proper delivery of notice. (Note that no similar provision exists for meetings of directors).
- ☛ A member's waiver of notice may be delivered electronically.
- ☛ A member of the NFP may authorize/deliver a proxy electronically.
- ☛ Written consent of members, or of directors, to the adoption of resolutions, in lieu of an actual meeting, may be given electronically.
- ☛ Members of the Board may participate in meetings by conference call or by electronic video screen communication.

ADVISORY

02/07/14

Contact: **Louis Vlahos**
Tax Partner
vlahos@farrellfritz.com
516.227.0639

- ☛ A board member's waiver of notice of a meeting may be sent by email.

Acquisition or Disposition of Property

- ☛ Approval requirements for the acquisition or disposition of certain properties are modified (e.g., in lieu of court approval, AG approval may suffice in certain circumstances).
- ☛ Requirements for the purchase or disposition of real property are relaxed; for example, the purchase of real property may be authorized by a majority of the board of directors, unless the property would constitute substantially all of the assets of the NFP.
- ☛ Similarly, no sale, lease or mortgage of real property may be effected without the approval of a majority of the board, unless it constitutes substantially all of the corporation's assets.

NFPs should begin the process of reviewing and, to the extent necessary, updating their by-laws to account for the foregoing changes.