Lawyers Alliance *for* New York

Connecting lawyers, nonprofits, and communities

Dated as of October 2015

New York Nonprofit Revitalization Act
Frequently Asked Questions

Amending Corporate Purposes

Question: How will a not-for-profit corporation amend its Certificate of Incorporation under the new system?

Answer: Going forward charitable not-for-profit corporations amending their corporate purposes will still have to get approval for that amendment and then file the amendment with the Department of State. However, section 804(a) of the New York Not-for-Profit Corporation Law ("N-PCL"), as amended, provides that charitable corporations will have to secure the consent of either the Attorney General or the Supreme Court, rather than the Supreme Court upon notice to the Attorney General. Nevertheless, if the charitable corporation chooses to secure the consent of the Supreme Court it must still provide notice to the Attorney General.

Applicability

Question: Does the Nonprofit Revitalization Act ("NPRA" or "Act") apply if our organization is not a public charity under federal law?

Answer: The Act applies to all not-for-profit corporations formed under New York State law, even if the corporation is not tax exempt under section 501(c)(3) or other provisions of the Internal Revenue Code ("IRC").

Question: Does this act apply to not-for-profit corporations incorporated out of state, but operating in New York?

Answer: If an organization is registered to conduct charitable solicitations or to hold charitable assets in New York State, then the changes in audit thresholds apply regardless of the organization's state of incorporation. The other provisions of the NPRA do not apply to organizations incorporated in other states but operating in New York.

Question: If we have a fiscal sponsor and are working on becoming a separate tax exempt corporation, does this new law apply to us?

Answer: Formation as an entity is a matter of state law; 501(c)(3) tax-exempt status is a matter of federal law, in particular the IRC. If the organization is incorporated under the N-PCL, then it will need to comply with the N-PCL as amended regardless of whether or not it has yet to receive tax-exempt status.

Attorney General Review

Question: Is there any indication of the circumstances under which the New York Attorney General ("NYAG")'s office will exercise its discretion to review a dissolution, sale of assets, or merger, versus when it will require Supreme Court review?

Answer: According to guidance issued by the NYAG on June 23, 2014, circumstances in which the NYAG may determine that Supreme Court review of a merger is appropriate include: (i) if members of a constituent corporation or members of the public have complained or expressed opposition, (ii) if the transaction will have a significant impact on the public or raises conflicts of interests, (iii) if assets of a merging corporation are held for a specific purpose requiring court approval, and/or (iv) if the NYAG has objections that have not been resolved after discussion.
http://www.charitiesnys.com/pdfs/mergers_and_consolidations.pdf

According to guidance issued by the NYAG on September 24, 2014, circumstances in which the NYAG may determine that Supreme Court review of a sale or other dispositions of assets is appropriate include: (i) if the corporation is insolvent, (ii) if the NYAG has received complaints or objections from interested parties entitled to notice, (iii) if the transaction is unusually complex or will have an impact on the public, and/or (iv) if the NYAG has objections that have not been resolved after discussion.
http://www.charitiesnys.com/pdfs/sales_and_other_dispositions_of_assets.pdf

According to guidance issued by the NYAG on October 6, 2014, circumstances in which the NYAG may determine that Supreme Court review of a dissolution with assets is appropriate include: (i) if the NYAG has received complaints or objections from interested parties and/or (ii) if the NYAG has objections that have not been resolved after discussion.
http://www.charitiesnys.com/pdfs/dissolution_with_assets.pdf

Audit Oversight

Question: If we're not required to have an audit, but we do have an audit, do the same requirements as to Board oversight apply?

Answer: The provisions related to the audit function are specifically tied to revenue thresholds ($500,000 & over, and $1,000,000 & over). If your organization has less than $500,000 in revenue and chooses to complete an audit, then it does not have to comply with the audit requirements of the Nonprofit Revitalization Act. Having said that, the requirement that the Board participate in the selection of the auditor, set the scope of the audit and speak with the auditor after the audit is completed is advisable as best practices.

Question: How does the nonprofit demonstrate that the Board or Audit Committee has reviewed the selection of the auditor. Is email sign off sufficient?

Answer: As to how the Board or Audit Committee demonstrates that it has signed off on the selection of the auditor, the scope of the audit and the final audit report, the best way to

memorialize this review is to note it in the minutes of a Board meeting or in the minutes of a committee meeting. Email approval would be appropriate if it was in the form of unanimous written consent by the Board or board committee, without a meeting. For example, if the Audit Committee was not meeting in person or by phone and you wanted to circulate the auditor's engagement letter to the committee for approval, and committee members were going to approve it through unanimous written consent, then the email sign off would be fine as long as each member emails their consent.

Question: Can Finance Committee serve the function of the Audit Committee?

Answer: If an organization is required to file audited financial statements, the new statute provides that the retention of the auditors and review of the audit results and any management letter must be approved by the Board of Directors or "an Audit Committee comprised of Independent Directors." If the organization has a Finance but not an Audit Committee, then consider expanding the scope of the Finance Committee's authority to include audit oversight and changing the committee's name. Some practitioners interpret the Act as requiring a separate committee whose function is to oversee the audit process.

Question: Are we required to change auditors; and if so, how often do we need to do so?

Answer: New York law does not require an organization to change auditors. There is not a clear consensus among nonprofit leaders about whether or how often it is necessary to change auditors. The decision should be informed by the auditors' performance. A review of that performance by the Board, or an Audit Committee comprised solely of Independent Directors, is required by the new law.

Question: Does the auditor need to present its findings to the entire Board or just a smaller committee of the Board?

Answer: The Board or Audit Committee must review the results of the audit and any related management letter with the independent auditor. According to guidance issued by the NYAG on February 24, 2015, review of communications to those charged with governance (including the management letter) resulting from the audit requires a conversation between the Committee and the independent auditor in which audit committee members participate; a face-to-face meeting is not required. If the organization has annual revenue of $1,000,000 or more and Board has delegated authority to the Audit Committee to oversee the audit process, then the auditor only needs to meet with the Audit Committee. The Audit Committee is then required to report to the full Board. If the corporation does not have an Audit Committee, then the auditor will need to meet with the Board.

Question: What would be an example of a suitable independent director in relation to the continuing auditor relationship?

Answer: A suitable example of an Independent Director would be a volunteer member of the Board of Directors who does not receive any compensation from the corporation or have

a business relationship with the corporation and is not a relative of a staff member or someone who has a business relationship with the corporation.

Question: "Boards of Directors of organizations with annual revenue of $500,000 or more will have to oversee specific aspects of the audit process." What exactly does this mean?

Answer: The new law increases the threshold amounts for requiring a CPA audit.

Boards of organizations with revenue of $500,000 or more will be required to
1. Oversee the audit of the organization's financial records;
2. Annually renew or retain the auditor; and
3. Review results of the audit with the auditor and any related management letter.

Additionally, as of January 1, 2015, for organizations with revenue of $1 million or more, either the Board or an Audit Committee comprised *solely of independent directors* must oversee the corporation's accounting and financial reporting processes and audit. The oversight must include the following:

1. Before the audit, reviewing the scope and planning of the audit with the auditor.
2. After the audit, reviewing and discussing additional items with the auditor.
3. Annually considering the auditor's performance and independence.
4. Reporting on the Audit Committee's activities to the Board (if these duties are performed by an Audit Committee instead of the full Board).

According to guidance issued by the NYAG on February 24, 2015, members of current management, who are responsible for developing and maintaining financial controls should not also be involved in the Audit Committee's performance of these four duties. Further, the NYAG guidance provides that only independent directors may participate in any board or committee deliberations or voting relating to these duties.
http://www.charitiesnys.com/pdfs/Audit_Committees.pdf

Question: Can the Treasurer serve on Audit Committee?

Answer: If a Treasurer is an Independent Director then under the N-PCL as amended they can serve on the Audit Committee. Best practices suggest, however, that the Treasurer should not Chair or sit on the Audit Committee because part of the purpose of the audit is to check the performance of the Treasurer and if the Treasurer serves on the Audit Committee they might unduly influence the work of the auditor. If the organization has annual revenue of $1,000,000 or more then according to guidance issued by the NYAG on February 24, 2015, members of current management, who are responsible for developing and maintaining financial controls should not also be involved in the Audit Committee's performance of its duties. http://www.charitiesnys.com/pdfs/Audit_Committees.pdf

Question: Can an Executive Director attend Audit Committee meetings?

Answer: The N-PCL does not prohibit an Executive Director from attending meetings of the Audit Committee. However, section 712-a(e) of the N-PCL states that only independent

directors may participate in deliberations or voting relating to issues before the Audit Committee. Best practices suggest that the Audit Committee meet for at least a portion of the meeting with the outside auditor without staff present, to discuss the performance of management.

Question: If we already have a contract with an independent auditor to conduct our audits for three years, fiscal years ending 12/31/13, 12/31/14 and 12/31/15, does this requirement affect us after that?

Answer: If the organization has gross revenue in excess of $500,000, then for the Fiscal Years ending 2014 and 2015 the minutes of either the Audit Committee or Board should note that the organization's independent auditor was engaged for a three year period beginning 12/31/13 and ending 12/31/15 and that the performance of the auditor will be fully reviewed at that time. Then for the FYE16 consider the retention and performance of the auditor as outlined in §712-A of the N-PCL as amended. Organizations with $1 million or more in revenue will have to annually consider the performance of the auditor.

Question: If the organization does not have an Audit Committee and work as a full Board to oversee the audit, you can simple notate that in the minutes and that is sufficient?

Answer: Yes, it would be sufficient to note in the board minutes that the Board is serving the function of the Audit Committee.

Question: Is a nonprofit corporation (foreign or domestic) that is registered with the Attorney General solely under the EPTL, rather than under Article 7-A of the Executive Law, subject to the new rules relating to audit committees?

Answer: No, section 712-a of the N-PCL as amended only references corporations required to report under the Executive Law so corporations that are only required to register under the EPTL do not have to meet the new audit requirements.

Question: Are 501(c)(4) corporations that are registered to solicit in New York subject to the audit committee requirements assuming they meet the thresholds? It appears that they are.

Answer: A New York Not-for-Profit Corporation that is required to register and report under the Executive Law will have to satisfy the audit requirements in Section 712-a regardless of which subsection if any, of the Internal Revenue Code they are exempt from federal taxation.

Audit Thresholds

Question: Which audit threshold will apply to a FYE2013 or FYE14 financial report filed in 2014 after the Act becomes effective due to an authorized extension?

Answer: According to guidance issued by the NYAG on April 15, 2014, the new audit thresholds will apply to audits and accountant reviews (a): with an original filing due date on

or after July 1, 2014 and (b) with an extended filing due date on or after July 1, 2014. www.charitiesnys.com/pdfs/NYSGuidance2014_Audit%20Thresholds%20and%20Fee.pdf

Question: Please clarify when the threshold for a required CPA audit is going to be increased and by how much.

Answer: The threshold is based on annual gross revenue, The amount that triggers the obligation to obtain and file with the New York Attorney General ("AG") an audit by an independent CPA is increased from:

- $250,000 to $500,000 as of July 1, 2014,
- $750,000 as of July 1, 2017, and
- $1 million as of July 1, 2021.

Organizations with annual revenue less than $250,000 will be able to file unaudited financial statements with the CHAR500. Organizations with more than $250,000 up to the audit requirement will be able to file an independent CPA review with the CHAR500.

Question: If a not-for-profit corporation that is required to have an audit because its revenue exceeds the financial threshold, while its affiliated entity is a not-for-profit corporation with revenue lower than $500,000, does the related entity need to have an audit or is a fiscal review acceptable?

Answer: If the affiliated entity is separately incorporated and separately files Form 990s and CHAR500s, then the affiliate is not required to file completed audited financial statements and can file an independent certified public accountants review report if the revenue is between $250,000 and $500,000.

Question: Does the Act's amended filing requirements apply to religious organizations?

Answer: Section 172-A of the Executive Law, which exempts religious organizations from the filing requirements, including audit filings with the state, has not been amended. Therefore, religious organizations are still exempted from filing requirements with the state. More generally speaking, the NPRA does apply to religious corporations with the exception of the changes to notice requirements in section 605.

Question: Does gross revenue for purposes of determining if an audit is necessary include amounts gained through fundraising?

Answer: Gross revenue and support for purposes of determining if an audit is necessary consists of all revenue of the organization including revenue raised through fundraising. According to guidance issued by the NYAG on April 15, 2014, all income received by the organization from any source, including contributions, grants, fees and other types of revenues, is included.
www.charitiesnys.com/pdfs/NYSGuidance2014_Audit%20Thresholds%20and%20Fee.pdf

Question: Our organization's budget is approximately $350,000, so we are under the new audit threshold. Is it still recommended that we go through the audit process?

Answer: An audit is not legally required. However, having an audit is certainly best practices and increases fiscal transparency so there are reasons to conduct an audit even if it is not legally required.

Question: Could you please explain the difference between an "audit by an independent CPA" and an "accountant's review report by an independent CPA"?

Answer: Here is a link to the Greater Washington Society of CPAs Educational Foundation website that contains an explanation of the difference between an audit and an accountant's review: http://www.nonprofitaccountingbasics.org/audit/audit-vs-review-vs-compilation

Board Chair

Question: Even though the new law says that the corporation can elect either a President or Chair or both, are these in essence the same positions? If a corporation has only a President and not a Chair, can the President be an employee?

Answer: A corporation can have both a President and a Chair. If the corporation only has a President then beginning January 1, 2017, that position cannot be filled by an employee. This is based upon Section 713(f) of the N-PCL as amended, which is intended to prohibit the board leader from being an employee. On October 26, 2015, the Governor signed a bill to extend the effective date of Section 713(f) of the N-PCL to January 1, 2017.

Question: Our Board Chair volunteers substantial services to our organization. Can she continue as Board Chair after January 1, 2017?

Answer: Yes, the limitation only applies to paid employees serving as Board Chair.

Question: Your advice that an organization without a chair cannot have a president who is an employee could be a problem for many organizations. Is this based on any official or unofficial guidance from the AG?

Answer: This answer is based upon Section 713(f) of the N-PCL as amended which states: "No employee of the corporation shall serve as chair of the board or hold any other title with similar responsibilities."

Charitable Reporting

Question: Can we leave off grant writers on the CHAR500?

Answer: As of July 1, 2014, grant writers will no longer be considered Fundraising Counsel (section 171-a(9) of the Executive Law) and, therefore will not have to be included on CHAR500 Schedule 4a.

Charitable Trusts

Question: How will the NPRA affect private foundations and charitable trusts, in particular do the requirements related to Audit Committees and independent directors apply?

Answer: The Act adds §8-1.9 of the Estates, Powers and Trusts Law to make applicable to charitable trusts the new requirements regarding audits, related party transaction, conflicts of interest policies and whistleblower policies. New York not-for-profit corporations that are exempt under IRC 501(c)(3) and classified as private foundations must comply with the N-PCL as amended.

Committees

Question: What are the limits on the authority of a committee of the Board?

Answer: A committee of the Board may have delegated authority to bind the corporation on any matter except:

(a) The submission to the Member of any action requiring the Member's consents under the N-PCL and any successor provisions or amendments thereto;

(b) The filling of vacancies in the Board or in any committee;

(c) The fixing of compensation of the directors for serving on the Board or on any committee;

(d) The amendment or repeal of the bylaws or the adoption of new bylaws; and

(e) The amendment or repeal of any resolution of the Board that by its terms shall not be so amendable or repealable;

Question: Can any committee bind the corporation or only a committee authorized to bind the corporation by its bylaws?

Answer: Only a Committee of the Board (consisting of 3 or more board members) and authorized by the Board can bind the corporation. Boards should be aware that they could be held responsible for agreements made by committees that appear to third parties to have authority to bind the corporation.

Question: Does every bylaw that refers to "standing" committees need to be revised and replaced with a specific designation of committees as either "of the corporation" or "of the board"?

Answer: If the Board does not want to change the composition or role of a Committee it is not necessary to immediately revise bylaws to eliminate the terms "standing" or "special" committee. We recommend, however, that the Board review the bylaws to determine what

changes are necessary in order to comply with the NPRA and to begin to implement those changes.

Question: Can a committee of the Board revise bylaws?

Answer: No, a committee of the board cannot amend the bylaws. Section 712(a)(4) of the N-PCL prohibits a committee from adopting, amending, or repealing bylaws.

Question: Will we now have to re-create our committees?

Answer: Yes, bylaws will need to be amended to reflect the new designations of Committees of the Board and Committees of the Corporation rather than Standing and Special Committees.

Question: We have a committee of the board with full authority, and at least 3 board members. These committees, however, have one or more non-voting members of the committee who are not board members but participate in the committee. Are they now NOT allowed to serve on the committee?

Answer: If the committee will be a Committee of the Board, the non-board members can attend meetings and participate in the deliberations but just cannot vote. The only exception to this rule relates to deliberations by the Audit Committee. Section 712-a(e) of the N-PCL states that only independent directors may participate in deliberations or voting relating to issues before the Audit Committee.

Conflict of Interest Policy

Question: Does the sample IRS conflicts policy fulfill the new N-PCL requirements?

Answer: No, the sample IRS conflicts policy does not fulfill the N-PCL requirements. It is a sample, not a required version of a policy.

Question: If you adopted the conflicts of interest policy before being required to do so are you safe?

Answer: Unless your organization adopted a conflict of interest policy as ***required*** by another federal, state or local law the conflict of interest policy will have to be updated for compliance with the N-PCL. Having adopted a conflict of interest policy in connection with an application for federal tax exemption or completing the Form 990 does not constitute a "requirement" exempting the organization from compliance with the N-PCL.

Question: What is the timeline, and the best practice, for staff, management and the Board to sign off on these disclosure forms. Is it yearly?

Answer: The NPRA requires that new board members complete a disclosure form prior to joining the Board and annually thereafter. The disclosure forms are usually executed in

connection with the annual meeting of the corporation or at the end or beginning of the fiscal year. According to guidance issued by the NYAG on April 13, 2015, officers and key employees also must submit an annual conflicts statement.
http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf

Question: By what date to we have to update the Conflicts of Interest policy?

Answer: July 1, 2014.

Question: Are there any policies other than a conflict of interest policy or whistleblower policy that now required of Not-for-Profit Boards, for example, an anti-nepotism, code of ethics, records retention, diversity or other personnel policies?

Answer: Beyond a conflict of interest policy and a whistleblower policy (for organizations with $1 million or more in revenue and 20 or more employees) the NPRA does not require an organization to adopt additional policies. Corporations that contract with New York State or New York City government may be required to adopt additional policies as a condition of contracting with the government.

Question: Why does the Lawyers Alliance model Conflict of Interest policy contemplate that a Related Party would include a 5-year look back, i.e., would include any person who is, or within the past 5 years has been, a Director, officer or Key Employee?

Answer: The Lawyers Alliance conflict of interest policy is designed to satisfy both the NPRA requirements and to take advantage of the safe harbor provisions available under the federal excess benefit transaction regulations. IRC section 4958. The excess benefit transaction regulations include a five-year look back period which is why we included it in the sample.

Question: Should a director have a duty to report and disclose under a Conflict of Interest policy, i.e., what if one Board member is aware of another director with a triggering interest but other director fails to self-disclose the triggering interest?

Answer: Section 715-a only imposes a duty upon the director, officer or key employee to disclose a conflict interest and a requirement that the person with the conflict of interest not be present at or participate in board or committee deliberation or vote on the matter giving rise to such conflict. However, according to guidance issued by the NYAG on April 13, 2015, it is recommended that the board adopt a more comprehensive policy that articulates standards of conduct for board members, officers and key employees regarding conflicts of interest, disclosure requirements, reporting requirements, and procedures for mitigation.
http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf

Compliance

Question: Once we have documents in place for compliance, what is the formal process for filing in NYS? Do you have any guidelines? Does anything need to be filed with the Attorney General?

Answer: Organizations that file a Form 990 are asked whether there have been changes to their governance documents and to supply updated documents to the IRS. Organizations already registered with the AG's office must either file a CHAR 410-A or indicate changes in the CHAR 500. It is in the Instructions for the CHAR 410. The instructions indicate that registered organizations are required to notify the AG's office within 30 days, so if an organization is not filing the CHAR 500 soon, it should submit the CHAR 410-A. http://www.charitiesnys.com/pdfs/char410i.pdf

Additionally, groups that have New York State contracts and are "prequalified" through the Gateway must update their Gateway filings. http://nycon.org/index.php/latest-news/news/state-commits-additional-gateway-fixes/#.U58OI4UeCDl

Corporate Type

Question: Will HDFCs formed to own low income housing automatically be deemed charitable?

Answer: Yes, section 13-a(2) of the Private Housing Finance Law was amended to provide that HDFCs governed by the N-PCL will be considered charitable.

Question: If a Type C corporation's Certificate of Incorporation does not require members, then is amendment of bylaws to specify that there will be no members going forward sufficient to convert the corporation to a non-membership corporation?

Answer: Yes, after July 1, 2014, only a bylaw amendment would be required to convert the corporation from a membership to a non-membership corporation if the Certificate of Incorporation is silent as to members.

Question: If a corporation is converting from a membership corporation to a non-membership corporation, aside from new bylaws and a member vote to dissolve their own class, is an amendment to the Certificate of Incorporation necessary and are there other required legal steps?

Answer: If the Certificate of Incorporation is silent as to classes of membership then only an amendment of the bylaws is necessary. An amendment to the Certificate of Incorporation is only necessary if the membership structure is contained in the Certificate of Incorporation. The only other step would be to disclose the change in governance structure in the next Form 990.

Question: How will the automatic corporate classifications be communicated?

Answer: The change in corporate classification will not be communicated. Rather, it will happen automatically by operation of law upon the effective date of the revised N-PCL, July 1, 2014.

Question: How does an organization know if it is Type A, B or C?

Answer: The corporate type will be stated in the Certificate of Incorporation. If you do not have a copy of the Certificate of Incorporation it can be ordered from the Department of State: http://www.dos.ny.gov/corps/nfpcorp.html#certinc.

Duties of Board Members

Question: As a Board member, how can I learn more about the responsibilities of officers and directors of nonprofit organizations in light of the new law?

Answer: The Charities Bureau of the New York State Attorney General's Office distributes and periodically updates "Right From the Start: Responsibilities of Directors of Not-for-Profit Corporations," available at http://www.charitiesnys.com/pdfs/Right%20From%20the%20Start%20Final.pdf, which contains general information to assist current and prospective members of nonprofit boards. It summarizes the fiduciary duties of care, loyalty and obedience, and gives examples of steps board members can take to help them fulfill these duties. Lawyers Alliance periodically offers trainings on the role of Board members in corporate governance, which are announced on our website at http://www.lawyersalliance.org/workshops.php.

Effective Date

Question: When is the effective date of the NPRA?

Answer: The effective date for the majority of the amendments is July 1, 2014.

Question: What are the consequences of noncompliance with deadlines?

Answer: There are no specific consequences for noncompliance with the deadlines contained in the NPRA. The Attorney General's office has broad enforcement authority and if they were to investigate an organization or review a transaction and the proper oversight was not exercised they could bring an enforcement action. According to guidance issued by the NYAG on April 13, 2015, in evaluating a nonprofit's compliance with the audit oversight provisions of the NPRA, the Charities Bureau will consider whether the corporation has made timely and good faith efforts to make any necessary changes to its board structure and implement procedures to comply with the new requirements. http://www.charitiesnys.com/pdfs/Audit_Committees.pdf.

Entire Board

Question: How you determine what is the "entire board" if you have a range in your bylaws and if you elect directors in classes, each year electing 1/3 of the Board?

Answer: The entire board would include those elected at the last election as well as those serving out the remainder of their terms.

Question: Does the Executive Director count towards the Entire Board number?

Answer: If the Executive Director is a board member then he or she counts towards the Entire Board number.

Question: My organization's bylaws only state that a minimum number of directors shall constitute the Entire Board (not less than 3). Our bylaws do not have a maximum number, so how would we determine our Entire Board under the new law and for quorum purposes?

Answer: The Entire Board will be the number of directors elected at the last annual meeting plus those directors completing their elected term.

Question: If a new board member joins during the year - not at the annual meeting - do they count towards the quorum count?

Answer: If a new board member joins the Board during the year, either to fill a vacancy or because the size of the Board has been expanded, then their presence at a meeting would count towards the quorum requirement. If that new director was either (1) elected within the range that had already been set or (2) elected to fill a new vacancy after the range had been expanded, then that new board members' addition would expand the size of the "entire board." Only if the bylaws call for a fixed number of directors would the addition of the new director leave the number constituting the "entire board" unchanged.

Foreign Corporations

Question: Do the provisions of the Nonprofit Revitalization Act apply to foreign corporations:

Answer: Lawyers Alliance interprets the statute as only applicable to domestic corporations except the provisions relating to increased audit thresholds. As a general matter, issues of corporate governance are traditionally governed by the law of the state of incorporation. A "corporation" is defined by section 102(5) as an entity formed under the New York Not-for-Profit Corporation Law.

Fundraising

Question: How does the new act affect fundraising? Will not-for-profit entities no longer be able to do de minimis fundraising before registration with the NYAG?

Answer: The rules relating to registration prior to solicitation by not-for-profit corporations under the Executive Law or the Estates Powers and Trusts Law remain unchanged.

Executive Compensation

Question: Is there a cap for executive compensation under the Act?

Answer: There is no cap for executive compensation under the Act. The Act does prohibit a compensated person from participating in the vote or deliberation regarding such compensation, except the individual may provide the Board with information and answer questions before the deliberation. N-PCL section 515(b) as amended. Executive Order 38 ("EO 38") does limit the payment of executive compensation and administrative expenses by not-for-profit corporations that receive a substantial amount of funding from New York State. Here is a link to the Lawyers Alliance Legal Alert on EO 38: www.lawyersalliance.org/pdfs/news_legal/Executive_Compensation_Legal_Alert_June_2013_final.pdf.

Incorporation Process

Question: Is this simplified process limited to the incorporation process itself, or does it also apply after the Certificate of Incorporation has been accepted for filing?

Answer: The ability of the Department of State to correct a Certificate of Incorporation or other filing is only available prior to the acceptance of the document by the Secretary of State for filing. After a document is accepted for filing it can be corrected by filing a Certificate of Change.

Question: Is the Division of Corporations accepting purposes clauses that have the broad scope of "any purpose for which a not-for-profit can be formed under the N-PCL" and then includes and lists some specific purposes (the Board and potential donors sometimes want to see those specific purposes)?

Answer: In the past, the Department of State has rejected for filing Certificates of Incorporation that contained the clause "including but not limited to" within the purposes clause. But, it is likely that the Department of State would accept a Certificate of Incorporation that contained a broad purposes clause and specific activities.

Question: In addition to no longer requiring Dept. of Education consent in advance of incorporation or an amendment to purposes where education-related activities might be implicated (notice within 30 days of filing instead), are other regulatory agency consents treated similarly? Notice within 30 days after filing; no advance consent required?

Answer: The only other consent/notice that is treated in a similar fashion is that of the Office of Children and Family Services as it relates to the provision of child care. N-PCL sec 404(b)(2).

Independent Directors

Question: Can an executive director retire and be appointed a Board Emeritus position after retiring? It seems like not for 3 years?

Answer: The answer is yes, the executive director could be appointed to a Board Emeritus position after retiring, but he or she would not be an "Independent Director" until after the 3 year mark.

Question: Can an ex-officio director still be an Independent Director if there is no financial relationship?

Answer: Yes, an ex-officio director, who is a director "elected or appointed by virtue of their office or former office in the corporation or other entity," can be an Independent Director as long as they otherwise satisfy the definition section 102(21) of the N-PCL as amended.

Question: Can a board member who is now defined as not being an Independent Director still serve on a committee of the corporation?

Answer: Under the N-PCL as amended, directors who are not "Independent Directors" can still serve on the Board, on any Committee of the Board, or on any Committee of the Corporation other than the Audit Committee.

Question: Do cousins count as "relatives"?

Answer: No, relatives are limited to spouse, domestic partner, ancestors, siblings (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren and spouses of siblings, children, grandchildren and great-grandchildren. N-PCL section 102(22) as amended.

Question: Do step-children count as “relatives”?

Answer: If the step-child is an adoptive child then they would be covered by the definition of “relative”; if the step-child is not an adoptive child then they would technically not be covered by the definition of relative.

Question: When the Chief Executive Officer (“CEO”) or other officer or top staff person employs relatives, how should supervision be treated, including verification of time records, appraisal and daily work assignments? Is there any scope for staff junior to the CEO being allowed to supervise such relatives?

Answer: The Act does not impact the ability of a not-for-profit organization to employ family members of management staff, board members or officers. Rather, the Act provides that when a director is related to a staff member that that director will no longer be an "Independent Director." However, it is not a best practice for family members to supervise each other. Because the CEO is ultimately responsible for the supervision of staff, having a family member report to another member of staff does not really solve the problem. Organizations that contract with the City of New York may have contractual limitations on their ability to hire family members of board members or senior staff.

Question: Is a director who provides services to a charitable organization as a vendor subject to the $25,000/2% Gross revenue cap when determining whether the director is an Independent Director?

Answer: It depends upon the nature of the relationship. If the board member is an independent contractor who provides services as an individual to the corporation, then the payment will likely be compensation paid to an independent contractor subject to a $10,000 threshold in any of the last three years. If the board member is an employee of a corporation who does business with the nonprofit, then when determining whether the director is an "Independent Director" you will have to determine whether the payments total the lesser of $25,000 or 2% of the gross revenue of either the nonprofit or the vendor.

Question: Is the Treasurer who signs checks an Independent Director with respect to the audit?

Answer: Having check signing authority on behalf of the corporation does not prohibit a director from being an Independent Director. Therefore, a Treasurer who has check signing authority but is otherwise an Independent Director can sit on an Audit Committee. Best practices suggest that a Treasurer not sit, or at least not chair, an Audit Committee because part of the function of the audit is to review the work of the Treasurer. It is not, however, prohibited by the N-PCL as amended.

Question: Can an attorney who serves as a corporation's counsel be on the Board? Does he needs to submit a disclosure statement as well?

Answer: An attorney who serves as corporate counsel can sit on the Board. If the attorney receives compensation for their services they will not be an "Independent Director." If compensated, the attorney who is a board member would have to complete the disclosure statement disclosing their professional relationship with the organization.

Question: When considering payments to or from an Independent Director, if the director is an employee of a firm that does business with the not-for-profit corporation (e.g. insurance agent), does the limit of $25,000 still pertain or is it payments to the director him/herself?

Answer: When determining whether a director is "independent" a payment to the employer of a board member is imputed onto the board member and if that payment exceeds the lesser of $25,000 or 2% of the gross revenue of either party then the director would not be

considered "independent." Additionally, the transaction between organization and the board member's employer would be governed by the conflicts of interest policy.

Question: I have a board member who is employed by a corporation that makes a $26,000 GRANT to the non-profit. Is that director not independent?

Answer: The director would still be considered independent because charitable contributions are excluded for purposes of determining if a director is independent. N-PCL 102(21).

Question: If a board member's spouse works for the City of New York and the not-for-profit corporation has contracts with the City, is the board member independent?

Answer: A spouse is a Relative as defined by §102(22) of the N-PCL as amended. If the value of the City Contracts exceeds the lesser of $25,000 or 2% of the corporations (or the City's) consolidated gross revenues and the spouse is considered to have a "substantial financial interest" in the City, then the director will not be an Independent Director.

Question: Would a director who is employed by the City of New York, which has numerous contracts with the not for profit be considered independent?

Answer: If the value of the City Contracts exceeds the lesser of $25,000 or 2% of the City's consolidated gross revenues and the director is considered to have a "substantial financial interest" in the City, then the director will not be an Independent Director. N-PCL sec. 102(21). The term "substantial financial interest" is not defined by the statute.

Question: Is a community board member of a community based organization who receives services but no cash payments from the community based organization an Independent Director?

Answer: Yes, such an individual is an Independent Director as long as he or she has received no more than $10,000 in direct compensation from the organization within the past three years. Note, however, that such an individual is a Related Party and any transaction between the board member and the organization should be evaluated pursuant to the conflict of interest policy.

Question: If a board member has received a total of more than $10,000 in the last three years or is married to someone who is a staff employee, they are not considered independent?

Answer: If a board member has received a total of more than $10,000 in any one of the last three fiscal years, they would not be an Independent Director. If the board member is married to a current staff member, they would still be considered an Independent Director. If the board member's spouse is or had been within the last three years, a *key* employee, they would not be considered an Independent Director.

Question: Does the value of In-Kind benefits count when evaluating whether a director is an "Independent Director?" For example, if we give a board member a free art studio, does this mean that board member is not independent?

Answer: A board member who receives in-kind benefits is still an "Independent Director" within the meaning of the New York Not-for-Profit Corporation Law as amended. That transaction, however, would be a related party transaction and should be evaluated pursuant to the organization's conflict of interest policy.

Question: Are BID property owners exempt from the definition of "independent directors" as it pertains to their assessment payments to the BIDs?

Answer: No, there are no exemptions from the definition of independent directors.

Question: Is a director who is a partner (or other type of owner) of a law firm that does business with the corporation excluded from the definition of independent director, since subsection III only applies to "employees" of the firm?

Answer: Whether or not a board member who is a partner in a law firm (or other type of owner) that represents the corporation will be an independent director depends on the level of compensation that the law firm receives. Once the compensation level is determined the analysis will have to be done under section 102(21)(ii) or (iii) as amended. Even if the director is independent, the decision to hire the director's law firm may still be a related party transaction.

Question: How do the independent director rules apply to employees of a for-profit corporation who serve as directors of a foundation set up by the for-profit? In some such cases, there may be no independent directors.

Answer: There are no exceptions from the definition of independent directors for corporate foundations. To determine whether the directors are independent it would have to be determined whether the for-profit corporation and the foundation are "affiliates" within the meaning of section 102(19) of the N-PCL as amended.

Question: Does Section 712-a(e) require that all NY not-for-profits have at least one Independent Director? E.g., if a small NFP has no audit committee and uses its Board to administer its Conflict of Interest policy, it would still need at least one Independent Director on the Board, and that person need to administer the policy alone because, per 712-a(e), the non-Independents on the Board could not participate in the administration of the Policy.

Answer: Yes, section 712-a(e) does require that a board include at least one independent director to provide audit oversight and oversee the adoption, implementation and compliance with the conflict of interest policy and whistleblower policy.

Members

Question: Are Members going to be required even if there are no corporate "types"?

Answer: Non-charitable corporations will be required to have members. Charitable corporations have the option of being membership or non-membership corporations. N-PCL section 601(a) as amended.

Question: Please clarify difference between Members and Board directors, and the scope of their respective functions and authority.

Answer: Board members are individuals with fiduciary responsibility to oversee the management of the corporation. Members are individuals without fiduciary responsibility who have the authority to elect directors and approve significant corporate actions.

Question: Section 601 of the N-PCL, as amended by § 61 of the NPRA, appears now to exempt only "charitable corporations" from the requirement of having members. The exception used to apply to all Type B corporations, but in making the change, it looks like the exception was made more narrow. This would mean, for example, that 501c4 organizations incorporated in NY must now have members. I assume that a bylaw which states that the directors shall also be the members of the corporation will satisfy this provision?

Answer: The definition of a Charitable Corporation now covers corporations that are formed for charitable, educational, religious, scientific, literary, and cultural or for the prevention of cruelty to children or animals and encompasses corporations that would have previously been incorporated as a Type B or Type C corporation and in some instances Type D. Whether or not an entity that is exempt from taxation under section 501(c)(4) and incorporated in New York has to have members depends on whether they would be classified as Charitable (previously a Type B, Type C or, in some instances Type D) or Noncharitable (previously Type A). Noncharitable corporations must have members; charitable corporations can choose a membership or nonmembership structure. A membership corporation can elect to have its board members serve as the members of the corporation.

Notice of Meetings

Question: Are we required to post notice of board meetings on our website even though we inform our members of the meetings via email and in our printed monthly calendar and Director report?

Answer: There is no requirement that notice of board meetings be posted on the organization's website unless the corporation is required to satisfy the Open Meetings Law. If the corporation is a membership corporation and has more than 500 members and is giving notice of a meeting through publication in a newspaper, then the notice also must be posted on the organization's website.

Question: What is "waiver of notice of a meeting"? Under what circumstances could this occur?

Answer: Organizations are required by the N-PCL to provide members and board members notice of meetings. If the organization is unable to send the notice in a timely fashion, then the failure can be waived by the individual to whom notice failed to be sent. The Act now allows members and board members to email the nonprofit corporation the waiver of notice.

Question: Do the Bylaws have to provide for notice by email or does the New York Not-for-Profit Corporation Law (N-PCL) cover all non-profits regardless of the Bylaws?

Answer: When the notice to be given is a notice to members, the N-PCL provides that "[a] copy of the notice of any meeting shall be given, personally or by mail, to each member entitled to vote at such meeting." N-PCL §605(a). When the notice to be given is a notice to board members, the N-PCL provides that "[t]he bylaws may prescribe what shall constitute notice of the meeting of the board." N-PCL §711(b). Therefore, bylaws do not need to be updated in order for a corporation to provide email notice of meeting to members but may have to be updated to provide email notice of meetings to board members.

Participation in Board Meetings

Question: Can board members participate in board meetings by teleconference (not videoconference) and count toward quorum?

Answer: The answer is yes, teleconference as previously authorized by an earlier amendment to the N-PCL and it continues to be a valid method of participation as long as not prohibited in the bylaws and the board member can hear and be heard.

Proxy Voting

Question: Do the rules related to electronic proxy voting by members apply only to membership corporations?

Answer: The answer is yes, under the Not-for-Profit Corporation Law in its current form and as amended by the Nonprofit Revitalization Act, board members are not authorized to vote by proxy.

Question: How is a proxy vote valid? What are the parameters?

Answer: Proxy voting is only allowed for members. Under Section 609 of the N-PCL as amended, members may authorize someone to serve as their proxy to act on their behalf at membership meeting of the Corporation or to take unanimous written action. Now that authorization can be provided via email.

Real Estate Transactions

Question: Must a majority of directors approve the leasing of office space?

Answer: Section 509(b) of the Not-for-Profit Corporation Law, as amended, provides that if a not-for-profit organization is leasing out space it owns or controls, then that lease shall be approved by a majority vote of the Board, or an authorized committee. However, if the lease constitutes all or substantially all the assets of the corporation, then a 2/3 vote of the Entire Board is required. Having said that, a lease can be a commitment of significant corporate assets, in which case best practices would warrant Board or committee approval.

Related Party and Related Party Transactions

Question: Can the Board Chairperson receive non-employee compensation from the Corporation?

Answer: Yes. Unless otherwise provided in the certificate of incorporation or the by-laws, the board shall have authority to fix the compensation of directors for services in any capacity. The provisions relating to related party transactions might be viewed to apply to executive compensation if the person being compensated is a director. However, the NYAG, in its guidance issued on April 13, 2015, states that "[t]ransactions related to compensation of ... directors ... are not considered related party transactions, unless that individual is otherwise a related party based on some other status, such as being a relative of another related party." http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf The Board Chairperson potentially would not be an Independent Director within the meaning of the Nonprofit Revitalization Act and could lose the liability protections extended to volunteer members of nonprofit boards.

Question: Is it a conflict if the executive director who is a principal owner of a for-profit business company receives payment for a business venture he is trying to introduce to the not-for-profit corporation on behalf of the for-profit by which he is employed?

Answer: Yes, it would be a related party transaction under federal and state law creating a conflict of interest and requiring the following:

1. Disclosure to the Board;
2. A determination of whether the transaction was in the best interests of the corporation and otherwise fair and reasonable;
3. A vote of the Board without the Executive Director's participation if they are a board member; and
4. Documenting the process and outcome in the minutes.

Question: In a related party transaction what is a "substantial financial interest"?

Answer: "Substantial financial interest" is not defined in the Nonprofit Revitalization Act so the transaction should be evaluated based upon the facts and circumstances of the organization.

Question: Can an officer of a corporation serve as an officer of a related party under the Act?

Answer: There is no limitation on an officer of one corporation serving as an officer of an affiliate or a related party under the Act. However, this officer will be considered a Related Party for the purposes of approving transactions between the two corporations. N-PCL Section 102(23) as amended. The conflict of interest policy must be followed when approving transactions between the two organizations.

Question: My not-for-profit corporation has a board member in common with another not-for-profit corporation. The second not-for-profit corporation leases space from us. Is this considered a related party transaction?

Answer: The common director would be considered a "Related Party." If, however, the common board member is a volunteer board member of both organizations entering into the lease it would not be considered a "Related Party Transaction" because the board member does not have a "financial interest" in the transaction. If the board member is compensated by either organization then it could be a Related Party Transaction.

Question: If a Board is considering a Related Party Transaction and the Related Party is a director, is the Board unable to permit the corporation to enter into such Related Party Transaction by unanimous written consent?

Answer: A Board cannot act by unanimous written consent when the Related Party is a board member because that board member must recuse themselves from the consideration and cannot vote on the transaction.

Question: Is an Executive Director prohibited from attending a board meeting because they are a related party? Do they have to leave the room during votes?

Answer: An Executive Director should not participate in any board votes relating to their own compensation or job performance.

Question: Does the Executive Director's compensation have to be approved by the full Board?

Answer: The provisions relating to related party transactions might be viewed to apply to executive compensation if the person being compensated is a director, officer or key employee. The NYAG, in its guidance issued on April 13, 2015, states that "[t]ransactions related to compensation of employees, officers or directors or reimbursement of reasonable

expenses incurred by a related party on behalf of the corporation are not considered related party transactions, unless that individual is otherwise a related party based on some other status, such as being a relative of another related party."
http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf

Question: What if your Board member owns a space that they are allowing the organization to use for a very small fee for a field location? Is that a Related Party Transaction?

Answer: Yes, this would be a Related Party Transaction but it could still be a fair transaction that is in the best interest of the corporation. Because the organization is entering into a business transaction with a board member it needs to be disclosed to the Board. If the board member is deemed to have a substantial financial interest in the transaction then the board needs to determine that the transaction is fair and reasonable and in the best interests of the corporation by, among other things, considering alternative transactions. After that analysis is done, the transaction needs to be approved by the Board or a designated committee.

Question: If your title is President and you are by definition on the board that means you cannot participate in a personnel meeting?

Answer: If a staff member has the title of President and the President is an ex officio member of the board then that board member cannot participate in board meetings relating to their compensation.

Question: How is the prohibition in N-PCL section 515(b) going to be interpreted? Does it prohibit a compensated person from participating in the vote or deliberation of the organization's budget even if the discussion does not specifically involve consideration of individual salaries or benefits?

Answer: It is not yet clear how the prohibition in N-PCL section 515(b) will be interpreted. Certainly the more conservative position would be that a compensated person should recuse themselves from consideration of the organization's budget since it implicates the salary and benefits that will be available to the employee/board member.

Question: Does approval by a Board of a related party transaction require a majority vote of all INDEPENDENT directors, or merely a majority vote of all directors except the director who is a related party in the transaction?

Answer: Section 712-a(c) provides that either the board or a committee comprised of independent directors oversee the adoption, implementation of, and compliance with a conflict of interest policy. Section 715(b)(2) provides that a related party transaction in which the related party has a substantial financial interest must be approved by "not less than a majority vote of the directors or committee members present at the meeting." There is no requirement that each of those directors be independent.

Question: If the Board contracts with the spouse of the Executive Director to provide services as an independent contractor, does that qualify as a related party transaction? If so, what does the Executive Director have to do other than disclose to the board that the person being hired is his/her spouse?

Answer: An organization contracting with the spouse of the Executive Director would constitute a related party transaction. The Executive Director has an obligation to disclose the conflict and the material facts to the board. N-PCL sec. 715(a). The board must than consider and approve the transaction. Other than disclosing the conflict to the board, the Executive Director does not have specific obligations other than not "improperly influencing" the Board's decision. N-PCL sec. 715-a(b)(4).

Question: With regard to approval of a related party transaction, what is the difference between influencing a vote and "improperly" influencing the vote?

Answer: The term "improperly influencing the vote" is not defined by the statute. Section 715(g) provides that the board may request "that a related party present information concerning a related party transaction at a board or committee meeting prior to the commencement of deliberations or voting related thereto."

Question: If a Board Member is an artist, and the Non-Profit Corporation wants to commission a piece of the Member's work for use by the Corporation pursuant to the Corporation's purpose, how can you satisfy the Related Party Transaction requirements when the works/services purchased by the Corporation are unique and substitutes are not easily identified?

Answer: The N-PCL does not establish guidelines for determining whether a transaction is "fair, reasonable and in the corporation's best interest" or for "consideration of alternative transactions." N-PCL sec. 715. The IRS Exempt Organization Tax Manual suggests that comparables should be determined by:

A. "Current independent appraisals of the value of the property that the organization intends to purchase or receive from, or sell or provide to, the disqualified person.
B. Offers received as part of an open and competitive bidding process."

http://www.irs.gov/irm/part7/irm_07-027-030.html#d0e1185

Question: Would an employment relationship with a child of a director be a related party transaction?

Answer: Yes, employing the child of a director would be considered a related party transaction since a related party includes the child of a board member (N-PCL sec 102(23)) and a related party transaction is "any transaction, agreement or any other arrangement in which a related party has a financial interest ..." N-PCL sec 102(24).

Question: When there is a substantial financial interest in a related party transaction, how many alternative transactions should the Board look at? Is one alternative sufficient?

Answer: With respect to related party transactions involving a charitable corporation and in which a related party has a substantial financial interest, the board must consider alternative transaction to the *extent available.* The Nonprofit Revitalization Act does not provide any further guidance on what "extent available" requires so the transaction should be evaluated based upon the facts and circumstances of the organization.

Timing

Question: What would you recommend as a bylaws adoption date for organizations currently drafting their bylaws? Should they be prepared to amend or restate come July or put the new provisions into the bylaws right now with a trigger date for effectiveness?

Answer: An organization that is in the process of amending its bylaws prior to July 2014 can adopt some changes now (e.g., heightened oversight by the Audit Committee, Conflict of Interests) consistent with the N-PCL. As to changes that are authorized by the Act but not consistent with the current N-PCL (e.g. email consents, videoconferencing), we recommend including those amendments but include a trigger date for effectiveness. The NYAG, in its guidance issued on February 24, 2015, states that organizations that are not yet in compliance with the audit oversight requirements should have a written plan with a timetable to achieve compliance. http://www.charitiesnys.com/pdfs/Audit_Committees.pdf.

Question: What are the penalties for not following new regulations? Is there a grace period?

Answer: There are no specific penalties for non-compliance with the amended Not-for-Profit Corporation Law. Certain provisions include penalties for noncompliance. For example, in instances where a Board willfully and intentionally approved a related party transaction that is not fair, reasonable and in the best interests of the corporation, the Attorney General can seek penalties of up to double the benefit improperly obtained. The NYAG has broad enforcement authority and an organization that is not in compliance with N-PCL as amended is subject to regulatory action. According to guidance issued by the NYAG on April 13, 2015, in evaluating a nonprofit's compliance with the audit oversight provisions of the NPRA, the Charities Bureau will consider whether the corporation has made timely and good faith efforts to make any necessary changes to its board structure and implement procedures to comply with the new requirements.
http://www.charitiesnys.com/pdfs/Audit_Committees.pdf.

Unanimous Written Consent

Question: Does unanimous written consent by email mean without an actual signature, just an email approval?

Answer: Yes, under section 708(b) of the N-PCL as amended, directors can consent via email without including an actual signature if "it can be reasonably determined that the

transmission was authorized by the director." Under section 614 of the N-PCL as amended, members can consent via email without including an actual signature if "it can be reasonably determined that the transmission was authorized by the director."

Question: About voting. are you saying that a Board cannot vote via email?

Answer: That is correct, the only action that a Board can take by email is unanimous written consent, which means that all board members currently in office have to consent to the action. Other than that, the Board has to meet to take action although that meeting can take place over the phone or via videoconferencing.

Videoconferencing and Teleconferencing

Question: For videoconferencing meetings, are there any new requirements for the minutes of those meetings?

Answer: There are no new requirements regarding the minutes of meetings in which members participate via videoconference.

Question: Will board members that participate in board meetings via conference call be counted towards a quorum?

Answer: A board member participating in a board meeting via conference call counts towards a quorum as long as: (i) the board member can hear and be heard; and (ii) the bylaws do not prohibit participation via conference call. Corporations that are required to comply with the Open Meetings Law have limitations on the ability of board members to participate via conference call.

Whistleblower Policy

Question: Does the 20 or more employee threshold for the whistleblower policy refer to full time employees only or does that also apply to part time employees?

Answer: The statute only states a "corporation that has twenty or more employees and in the prior fiscal year had annual revenue in excess of one million dollars" and does not distinguish between full time and part time employees.

Question: Are there requirements for distribution of policies, e.g., in writing, or on website?

Answer: The statute is silent as to methods of distribution. The NYAG, in its guidance issued on April 13, 2015, states that the requirement may be satisfied by posting the policy on the organization's publicly available website and making a hardcopy available to any of the necessary individuals who request it in that form. However, the guidance stresses that best practices would include an initial hardcopy distribution, with the requirement that the necessary individuals acknowledge that they have received and reviewed the policy. http://www.charitiesnys.com/pdfs/Charities_Whistleblower_Guidance.pdf.

Question: A whistleblower policy is required of corporations with 20 employees or more AND $1 mil revenue or either/or?

Answer: A whistleblower policy is required for corporations with 20 or more employees and $1 million in revenue in the prior fiscal year.

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Lawyers Alliance for New York is eager to hear your comments, questions, experiences as the nonprofit community works to comply with the Act. For a summary of the Act, visit www.lawyersalliance.org/pdfs/Summary_Nonprofit_Revitalization_Act_9-11-2013.pdf. This alert provides general information only, not legal advice. Please contact Legal Director Linda Manley at (212) 219-1800 x 239, or lmanley@lawyersalliance.org, or visit our website www.lawyersalliance.org for further information.

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