



BOARD ETHICAL ISSUES AND CONFLICTS OF INTEREST

Presented by:

Daniel G. McKay, Esq.

Board Responsibilities

- **Provide strategic guidance and advice.**
- **Oversee and monitor bank in light of its objectives.**
- **Select, oversee and evaluate management.**
- **Understand and monitor Bank's financial performance.**
- **Review and approve major auditing and accounting practices.**

Board Responsibilities (continued)

- **Oversee and monitor the activities of Board committees.**
- **Make recommendations to corporators or shareholders on matters requiring their approval.**
- **Keep corporators/shareholders informed.**
- **Make timely business decisions.**

Select Public Company Board Responsibilities

- **Audit Function**
 - **Independent Audit Committee**
 - **Engagement of independent auditor**
 - **Interactions with independent accountant**
 - **Role of financial expert**

Select Public Company Board Responsibilities (continued)

- **Compensation**
 - **Independent Compensation Committee**
 - **Evaluate and set compensation for CEO (or recommend for approval by majority of independent directors on full board)**
 - **Evaluate and recommend compensation for other executive officers**
 - **Provide compensation report in proxy statement**

Standard of Conduct

- To act in good faith with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

Basic Fiduciary Duties

- **Duty of Care**
- **Duty of Loyalty**

Duty Of Care

- **Be informed.**
- **Act prudently.**

Duty of Loyalty

- **Act in good faith.**
- **Avoid conflicts of interest.**
- **Disclose corporate opportunities.**
- **Seek independent advice when necessary.**

Corollary Duties

- **Duty to disclose (inform board of relevant information).**
- **Duty not to disclose (protect confidentiality of board information).**

Conflicting Interest Transactions

- **Definition:**
- **A transaction as to which:**
 - 1. the director is a party; or
 - 2. in which the director had a material financial interest, known by the director; or
 - 3. in which a “related person” was a party or had a material financial interest known by the director.

Heightened Duty

- Transaction must be fair in fact.
- Approval must have the imprimatur of independence.
- Burden on director to prove that standard was met.

Disclosure Requirements

- **Conflict must have been disclosed to the Board (or committee).**
 - **Existence and nature of the director's conflicting interest.**
 - **All material facts known to the director material to a director in deciding whether to proceed with the transaction.**
- **Exception: Disclosure of material facts not required if it would violate legal duty to others.**
 - **Fiduciary duty to another**
 - **Professional duty of confidentiality**

Approval Requirements

- **Required disclosure must have been made.**
- **Approved by a majority of non-conflicted directors (or committee members).**

Consideration of Other Constituencies

“In discharging their duties, the directors and officers of the corporation may, in considering the best interests of the corporation and of its shareholders, consider the effects of any action upon employees, suppliers and customers of the corporation, communities in which offices or other establishments of the corporation are located and all other pertinent factors.”