



**Testimony of Rachael Fauss, Reinvent Albany
To Governance Committee of the MTA
Regarding MTA Code of Ethics for Board Members**

March 19, 2018

Good afternoon, I am Rachael Fauss, Senior Research Analyst for Reinvent Albany. We advocate for more transparent and accountable state government --- including for state authorities like the MTA.

First, I want to thank you for your service. We appreciate that you, the MTA board, are volunteers and are given large amounts of complex policy and budget information to review.

We are here to ask the MTA Governance Committee to fulfill its mandate under the NYS Public Authorities Law Section 2824 to adopt best practices on ethics and conflicts of interest. We, and many observers of the MTA, are alarmed by the conflict of interest and the potential for pay-to-play created by Chairman Lhota's \$350 thousand dollar a year directorship with Madison Square Garden --- an organization which is highly enmeshed with MTA activities ranging from the New Penn Station, to the Belmont Development project involving the LIRR. We are also concerned about the political contributions being made by MTA board members, in possible violation of the MTA Code of Ethics.

Given the concerns raised by these many issues -- which the press is rightly highlighting to public, we urge the MTA Governance Committee to amend the MTA Code of Ethics for Board Members. Specifically, we ask you to:

- 1. Ban outside income for the MTA Chairman and CEO and, at a minimum, appointed, non-civil service staff;**
- 2. Require notification to the full MTA Board of any member's conflicts, and create a public record of conflicts;**
- 3. Ban political contributions from board members' businesses and family, and publicly report political activities; and**
- 4. Centralize internal MTA ethics oversight to the Governance Committee and, ideally, one assisting staff member.**

The Governance Committee has since 2014 adopted the code annually with no changes, as you did last in December 2017. We believe that the MTA should hold itself to a higher standard and proactively change its policies now given recent events, and not wait for its annual review in December 2018, per your current work plan. The current policy of disclosure and recusal for conflicts is simply not enough to give the public confidence that MTA officials are serving only the public interest. The MTA has the authority to go above and beyond state law, and it should do so.

The Chairman and CEO of the MTA is by law a salaried employee, and is responsible for discharging the executive and administrative functions and powers of the authority. To have a "volunteer" in this position who is not subject to the same standards as others agency heads is not credible given the duties set in law and responsibility to the public to fulfill them.

Our detailed recommendations are below, which will be sent to you. Thank you for your time.

Reinvent Albany
Recommendations on MTA Code of Ethics for Board Members
March 2018

Reinvent Albany has conducted a review of the MTA Code of Ethics for Board Members, as well as the Public Authorities Law, Public Officers Law, and recommended guidance from the Authorities Budget Office (ABO) and Joint Commission on Public Integrity (JCOPE), as it relates to conflicts of interest and political activities. Our specific recommendations for each of these areas are below.

- 1. Ban Outside Income for Chairman and CEO, and, at a minimum, appointed, non-civil service staff** - JCOPE clearly states that agencies are permitted to adopt more stringent regulations on outside conflicts in its regulations on conflicts of interest: Part 932.10 *“Nothing contained in this Part shall prohibit any State Agency from adopting or implementing its own rules, regulations, or procedures with regard to outside activities that are more restrictive than the requirements of this Part.”* The MTA Board should ban via its Code of Ethics all outside income for its Chairman and CEO, and, at a minimum, appointed, non-civil service staff;

- 2. Require full MTA Board notification of any member conflicts via its Governance Committee, and publicly record any conflicts** - The ABO in its draft guidance related to Conflicts of Interest provides that in disclosing such conflicts, they must be made part of the public record: *“Duty to Disclose: All material facts related to the conflicts of interest (including the nature of the interest and information about the conflicting transaction) shall be disclosed in good faith and in writing to the Governance Committee and/or the Ethics Officer. Such written disclosure shall be made part of the official record of the proceedings of the authority....The minutes of the authority’s meetings during which a perceived or actual conflict of interest is disclosed or discussed shall reflect the name of the interested person, the nature of the conflict, and a description of how the conflict was resolved.”* The MTA Code of Ethics provides no public transparency of conflicts. Currently, conflicts of the MTA Chairman and CEO are provided solely to JCOPE, which is not obligated to report this to the MTA Board. Board member conflicts are largely reported to the Chairman.

The MTA should adopt the ABO recommended language to notify the Governance Committee and provide a public record of conflicts. We believe that the Governance Committee is the ideal place for this notification, given its responsibilities under Public Authorities Law, and that the full MTA Board should be made aware of potential conflicts of other members, which would be accomplished via creation of a public record. This should be further extended by also noting in the public record any recusals made by board members in the course of conducting meetings.

3. Ban political contributions from businesses and family, and require public reporting of political activities

- **Ban political contributions from board members' businesses and family**- The MTA Ethics Code notes in Part 4.06 that board members are prohibited from making political contributions to the governor, pursuant to Executive Order. This should be clarified to ban contributions from board members' businesses and family members, as the Code states that “No Board Member *may request or demand that any other person* make or offer to make any monetary contribution to the campaign of the Governor”.
- **Public reporting of political activities** - under Part 4.11, the MTA Code specifies prohibited political activities, such as obtaining political party positions, and provides notification to the Chairman if board members are considering a run for public office. Consistent with other conflicts of interest, the Governance Committee should be notified regarding political activities of board members, which would be noted in the public record.

4. Centralize internal MTA ethics oversight to the Governance

Committee and, ideally, one supporting staff member - The MTA Code of Ethics provides that questions be reviewed or conflicts be disclosed to a variety of positions within the MTA, depending on the matter: the Chairman of the Board, Chair of the Audit Committee, Ethics Officer, General Counsel, or Chief Compliance Officer. While these different positions and officers may under the current oversight structure be more equipped to handle individual problems or conflicts in certain areas, this creates a confusing overlay of authority that is unclear at best. The lines of authority and oversight within the MTA to handle ethics and conflicts questions and possible violations should be clearly outlined in the MTA Code of Ethics to ensure that individual board members are clear where they must go to address conflicts and questions. Ideally, oversight should be centralized to the Governance Committee to allow for full MTA Board notification and creation of a public record, per our recommendations above, and a single supporting staff position. In reviewing the MTA's governance structures via the committee charters and by-laws, the Governance Committee should seek to streamline ethics oversight.

Sources

News

- Rubenstein, Dana. “Lhota gets job at MSG, raising conflict concerns.” 2/12/2018. Politico, <https://www.politico.com/states/new-york/city-hall/story/2018/02//12/lhota-gets-jobat-msg-raising-conflict-concerns-248593/>

- Goldmacher, Shane; Rosenthal, Brian; and Armendariz, Augustin. “In Spite of Executive Order, Cuomo Takes Campaign Money From State Appointees.” 2/28/2018. The New York Times.
<https://www.nytimes.com/2018/02/24/nyregion/cuomo-fund-raising-ethics-appointees.html>

Legal

- MTA Code of Ethics, Board Member, Adopted November 2014,
http://web.mta.info/mta/compliance/pdf/Board_Code_of_Ethics_Nov_19_2014.pdf
- MTA Whistleblower Policy,
<http://web.mta.info/mta/compliance/pdf/003088-whistleblower-protection-policy.pdf>
- ABO Recommended Conflict of Interest Policy for Public Authorities,
<https://www.abo.ny.gov/recommendedpractices/ConflictofInterestPolicy.pdf>
- ABO Recommended Model Code of Ethics,
<https://www.abo.ny.gov/recommendedpractices/ModelCodeOfEthicsCharter.pdf>
- Public Officers Law Sections
 - [73 on Business Relationships](#)
 - [73-a on Financial Disclosure](#)
 - [74 on Code of Ethics](#)
- JCOPE Regs, Title 19 NYCRR Part 932,
<http://www.jcope.ny.gov/about/ethc/Title%2019%20NYCRR%20Part%20932%20rev%20July2015.pdf>
- Governor Paterson Executive Order 7,
<http://worldcat.org/arcviewer/4/AO%23/2010/12/28/H1293463408438/viewer/file2395.html>