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OMW: Market, Communication and Policy Trends in Tolling

Building an Effective Ethics Policy

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Not a Good Day at the Office. . .

- *“Lax ethics practices raise questions at the Authority”*
- *“The Authority operates under ethics practices so lax that directors have fostered an ‘anything goes’ culture, routinely involving themselves in high-dollar deals with firms that enjoy personal, financial or professional ties with board members.”*
- *“Outside auditor criticizes lack of an ethics policy dealing with conflicts of interest.”*

Ethics Policy as Part of Solution

- **Board adopted Ethics Charter**
- **Board involved in development of ethics policy**
- **Board briefed on ethics by independent experts**
- **After public briefing board adopted ethics policy and appoints ethics officer**
- **Employee ethics policy tracking Board policy adopted**
- **Annual training and review of policies scheduled**

If Ethics Policies Can Be Part of the Solution What is the Problem?

- Leadership misconduct
- Employee misconduct
- Media-fed perceptions of an “out-of-control” organization
- Human nature
 - A world of chisellers
 - Group sinning—bad behavior amplified in groups

Why an Ethics Policy?

- **Declare behavioral expectations and common law duties (e.g., “fiduciary duty”) that aren’t clearly stated in statutes**
- **Express institutional aspirations**
- **Address organization-specific challenges—e.g., vendor relationships**
- **Recognized organizational best practice**
- **Disciplinary tool**

The Focus of Ethics Policies

- **Divergence between interests of the individual and those of the organization**
- **Strong ethics policy recognizes conflict and provides clear expectations for employee behavior**
- **Ethics policy should include process for recognizing and responding to conflicts**
 - Reporting obligation
 - Issue resolution process

Common Elements in Ethics Policy

- **Statement of aspirations and expectations**
- **General injunction to follow the law**
- **Duty owed by employee to organization**
- **Conflicts of interest**
- **Duty to cooperate/report**
- **Process for resolving issues and by whom**

Toll Authority-Specific Issues

- **Interaction with vendor community**
 - Gift policy
 - Revolving door
- **Confidentiality**
 - Customer data
 - Intellectual property
 - Organization plans
- **Nepotism**

The Importance of Appearances

- **Ethics policies function in the “grey area” around laws and rules**
- **Elevate appearances of impropriety to comparable status as actual conflicts**
- **Encourage employees to be sensitive to appearances**
- **Provide a process for appearances issues to be addressed—e.g., reporting and recusal**

Drafting Challenges

- **Statement of principles vs. catalog of specifics**
- **Dealing with existing legal requirements**
 - Aspirations vs. “gotcha” risk
 - Build aspirations on foundation of existing law rather than in conflict with existing law
- **Crisis tunnel vision—fighting last war**
- **Language rough-riding and hijacking**

Drafting Tips

- **Involve Board of Directors in process**
- **Try for same behavioral standards throughout organization**
- **Match process with principles**
 - Ethics officer
 - Conflicts reporting/resolution process
- **Consolidate other statements into policy**
- **Don't be original—borrow**

Use Ethics Policy

- **New employee orientation**
- **Annual refreshers**
- **Ethics Officer outreach**
- **Annual Board review and organizational affirmation**
- **Website posting**
- **Use as guide in everyday life of the organization**
- **Use its authority to say no—and yes**

Conclusions

- **Don't wait for crisis but don't waste one either**
- **Build on existing law and ethics policies**
- **Aim for clear statement of ethical requirements, especially when imposing higher standards**
- **Focus on the employee/organization conflict**
- **Deal with appearances**
- **Involve board in drafting and ratification**
- **Make policy part of life of your organization**