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NONPROFIT REVITALIZATION ACT ALERT

NEW YORK NONPROFIT REVITALIZATION ACT AMENDED

*LEGISLATION SIGNED DECEMBER 11, 2015 MODIFIES KEY DEFINITIONS
UNDER THE NEW YORK NOT-FOR-PROFIT CORPORATION LAW*

In order to comply with the Nonprofit Revitalization Act of 2013, most New York nonprofits have gone through the painstaking process of revising their bylaws and conflict of interest policies to satisfy requirements that became effective in July 2014. In large measure, these requirements were aimed at preserving the independence of boards of directors and ensuring that transactions entered into by nonprofits were in their best interest and not unduly influenced by interested or “Related Parties.” Now, as a result of legislation signed by Governor Cuomo last month, nonprofits will once again need to reexamine and amend their bylaws and policies because of modifications to key definitions under the Not-For-Profit Corporation Law.

The following changes in definition became effective December 11, 2015:

- **Affiliate:** Affiliate no longer includes an organization that is under common control with another corporation. This change is potentially helpful to related organizations. It may be easier for directors to qualify as “Independent Directors”, and the organization may have fewer “Related Party Transactions”, as both definitions incorporate the affiliate concept.
- **Independent Director:** A fourth clause was added to this definition disqualifying directors who, within the last 3 years, worked on the corporation’s audit in any capacity, including as an employee, director, officer or owner of the organization’s outside audit firm. A director will also be disqualified from being independent if he or she has a “Relative” who served in such a capacity.
- **Relative:** Relative now includes a Domestic Partner (as defined by the Family Health Care Decisions Act), or the Domestic Partner of a brother, sister, child, grandchild, or great-grandchild.
- **Related Party:** In addition to considering officers, directors, Key Employees and Relatives of those individuals as Related Parties, this definition was expanded to include any person who exercises the same powers of a director, officer or Key Employee of the corporation or an Affiliate, and the Relatives of such an individual.

In addition to the above definitions, the legislation amends provisions of the statute related to the definitions of “Entire Board” and “Key Employee” and clarifies procedural aspects for board deliberations and voting and distribution of the corporation’s whistleblower policy.

Nonprofits need to revisit and amend their bylaws and policies to incorporate the concepts introduced by the new legislation. It should also be noted that while the amendments clarify certain concepts introduced by the 2013 Nonprofit Revitalization Act, they do not address all of the deficiencies presented by that law. In the meantime, the New York Charities Bureau provides additional guidance on certain aspects of the Not-For-Profit Corporation law, available here:

http://www.charitiesnys.com/guides_advice_new.jsp or organizations may consult their legal counsel.

A full copy of the new legislation amending the 2013 Nonprofit Revitalization Act is available here:

<https://www.nysenate.gov/legislation/bills/2015/s5868a>

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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