Information Item

CARL-6  Overview of Trustee Fiduciary Responsibilities and Risks

Background Information

The attached is an overview of trustee fiduciary responsibilities and risks, including fiduciary obligations of the UNC Greensboro Board of Trustees, specific CARL Committee obligations, and insurance and indemnity.

Attachment

6.1  Trustee Fiduciary Responsibilities and Risks
UNC GREENSBORO
Office of Institutional Integrity and General Counsel
Overview of Trustee Fiduciary Responsibilities and Risks

Compliance, Audit, Risk Management and Legal Affairs (CARL) Committee

November 29, 2022
Agenda

• Fiduciary Obligations of UNC Greensboro Board of Trustees
• Comparison of Corporate verses UNC Greensboro Obligations and Risks
• Specific CARL Committee Obligations (Charter)
• Insurance and Indemnity (Defense of State Employees Act and Liability Coverage)
Fiduciary Responsibilities

Good Faith
Discharge duties honestly, fairly and conscientiously.

Loyalty
Avoid conflicts of interest and self dealing.
University comes first and should receive the full benefit of Trustee transactions and engagements.

Care and Due Diligence
Be knowledgeable (attend and be prepared for meetings, be engaged, know bylaws and policies, know University mission).
Be sure to maintain confidentiality.
Board of Trustees Obligations

• Source of obligations:
  • NC General Statutes
  • Board of Governors Code
  • UNC Greensboro Board of Trustees policies

• Code requires Boards of Trustees ensure compliance with educational, research public service roles. Specifically the following:
  • Approval of honorary degrees, awards and distinctions
  • Advise the chancellor on budget estimates
  • Responsible for campus capital construction once approved by BOG/authorized by state:
    • Selection of architects
    • Approval of building sites
    • Approval of plans and specifications
    • Final acceptance of completed project
  • Maintain master plan
  • Recommend to BOG property acquisitions
  • Preserve, maintain and manage institutional trust funds
  • Establish policies mandating collection of tuitions, fees, deposits
  • Determine student services (healthcare, athletics)
  • Establish traffic and parking regulations
  • Develop policies to control and supervise any power plants, water and sewer systems, other utilities, facilities and child development centers
Public Company Obligations

Sarbanes-Oxley

• Protects investors by requiring accurate and reliable corporate disclosures

• Statute requires
  • Accurate and understandable Financial Statements
  • Codes of Ethics for Financial Administrators
  • External controls include review by Board or Outside Auditors
  • Investigations
  • Prohibits
    • Fraud
    • Destruction of Documents
  • Offers
    • Whistleblower protection for reporting
Not-for-Profit Obligations

• Board **oversight of the audit function**
  • Evaluate based on size and complexity

• Include **oversight** and **review** to ensure independence
  • Oversight includes meeting with internal and external auditors and review of audit results

• Understand and discuss **risk management and prevention**
  • Specific to industry and not-for-profits

• **Audit expert**, but expert does not need to be a Board member
  • Generally Accepted Accounting Principles (GAAP)
  • Generally Accepted Auditing Standards (GAAS)
  • Generally Accepted Government Auditing Standards (GAGAS)
## Comparison of Key Risks

<table>
<thead>
<tr>
<th>Public Company (Sarbanes-Oxley)</th>
<th>UNC Greensboro (NC General Statutes and Board of Governors' Code)</th>
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</thead>
<tbody>
<tr>
<td>• Conflicts of interest</td>
<td>• Self-dealing by Trustees</td>
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<tr>
<td>• Failures to disclose</td>
<td>• Fundraising for political candidates</td>
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<td>• Undue influence on audits</td>
<td>• Plagiarism/research misconduct</td>
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</table>
Comparison of Key Risks (continued)

Public Company (Sarbanes-Oxley)

- Criminal conduct
  - including altering documents
- Fraud

UNC Greensboro (NC General Statutes and Board of Governors' Code)

- Fraud by employees
  - Research Misconduct, Plagarism
- Compliance Issues
  - Especially Athletics /NCAA
  - Federal regulators
- Student misconduct
Comparison of Controls

**Public Company (Sarbanes-Oxley)**
- Directors compensated
- Directors commonly appointed from similar industries
- Corporate Internal Controls
- Corporate Codes of Conduct
- Whistleblowers and retaliation

**UNC Greensboro (NC General Statutes and Board of Governors’ Code)**
- Board of Trustees volunteers
- Trustees appointed by NC legislature and Board of Governors
- Internal Auditor
- Compliance with NC Ethics Act for Trustees and Senior Officers
  - OIIGC staff has professional ethical obligation as well
- Conflict of Interest and Conflict of Commitment Policies
  - All employees
- State statutes explicitly offering whistleblower protection for state employees
Comparison of Controls (continued)

Public Company (Sarbanes-Oxley)

- Corporate External Controls (Board Audit Committee or outside auditors)
  - Auditors have to report either to audit committee or full board (in absence of committee)
  - Disclosure of audit committee financial expert (required by Act)
    - Experience as auditor, CFO, or comptroller
    - Understanding generally accepted accounting principles
    - Experience in preparing financial statements
    - Experience applying principles to accounting for estimates, reserves, accruals
    - Experience with internal accounting controls and
    - Understanding of committee function

UNC Greensboro (NC General Statutes and Board of Governors' Code)

- Accountability to Board of Governors
- Accountability to Office of State Auditor (OSA)
- Accountability to State Office of Management and Budget (OSMB)
- State-mandated Records Retention Policy – consistent across agencies
- Public Records Act compliance
CARL Committee Charter establishes clear guidelines regarding specific oversight obligations:

- Assist the Board of Trustees related to:
  - the integrity of the University’s financial reporting;
  - the adequacy and effectiveness of the systems of internal control;
  - the independence and performance of the external and internal audit functions; and
  - the independence and performance of the compliance function.
CARL Charter Guidelines

• **Compliance**: Understand and encourage adherence to laws, regulations and ethical aspirations; promote establishment of collaboration; monitor and advise on compliance program; support training efforts.

• **Audit**: Understand Institute of Internal Auditors (IIA) International Standards; review audit work plan, Office of State Auditor (OSA) financial audit(s), and other audits; corrective action plans.

• **Risk Management**: Evaluate and monitor Risk Management Program; establish expectation for collaboration regarding risk management; promote culture supporting risk management goals; support training and education.

• **Legal Affairs**: oversee adherence to legal and ethical obligations relating to governance; review litigation and complaints; maintain privilege.
Insurance and Indemnity Protections

Defense of State Employees Act:

• Trustees are protected under the State Tort Claims Act, included as “officers”

• The Board of Trustees is included in the definition of “The State”

• The State provides the legal defense of any civil or criminal action brought against trustees in their official or individual capacity, or both, on account of an act done or omission made in the scope of course of action as a trustee.
Excess Insurance Coverage

Public Officers and Employees Liability Insurance
• Insurance acquired by the State
• Premiums paid by University

Coverage
• $2,000,000 per employee
• $2,000,000 per occurrence
• $10,000,000 annual aggregate
Excess Policy Exclusions

• An occurrence which is not within the scope and course of service.
• An occurrence which involves fraud, corruption, or malice.
• An occurrence which creates a conflict of interest between the State and service.
• An occurrence which would not be in the best interest of the State.
• An occurrence between two insureds.
Excess Policy Exclusions

- Nuclear Liability
- Pollution
- Asbestos
- Criminal Acts
- Autopsies
- Sexual/immoral acts or abuse
- Workers' Compensation
- Silica
- Fungus
- Terrorism

- Violation of statutes in connection with sending, transmitting or communication of any materials or information
- Liability for automobiles, aircraft, or watercraft
- Sickness/death arising out of and in the course of employment
- Covered Territory Endorsement (OFAC)
- Medical, surgical, dental, x-ray, services
Questions?
Find your way here