December 8, 2022

The Honorable Carolyn Maloney
Chairwoman
Committee on Oversight and Reform
Congress of the United States
House of Representatives

The Honorable Gerald E. Connolly
Chairman
Subcommittee on Government Operations
Congress of the United States
House of Representatives

Dear Madam Chairwoman and Mr. Chairman:

On September 12, 2019, the Washington Metropolitan Area Transit Authority, Office of Inspector General (WMATA OIG) received your letter from the Committee on Oversight and Reform regarding the WMATA Board of Directors Ethics Committee's investigation into then Board Chairman Jack Evan's compliance with the Board's Code of Ethics and the WMATA Compact. **(Appendix 1)**

In the letter, the Committee on Oversight and Reform requested that WMATA OIG review the more than 900 pages detailing the WMATA Board of Directors Ethics Committee's investigation and related internal deliberations among WMATA staff and Board members. Our response was delayed in deference to the established federal principle that constrains OIGs, in the absence of extraordinary circumstances, from providing confidential information about any open criminal investigation in response to a request pursuant to Congress' oversight authority. *See*, *Congressional Requests for Information From Inspectors General Concerning Open Criminal Investigations*, 13 Op. O.L.C. 77 (1989). In addition, the effects of the COVID-19 pandemic affected OIG's ability to investigate the matter in a timelier manner.

Our office has conducted the requested review and is now at liberty to respond to the Committee on Oversight and Reform. The conclusions set forth below, however, are those of WMATA OIG only. They do not purport to express the conclusions of any other investigation or review conducted by other agencies or entities.

At your request, WMATA OIG reviewed the investigation conducted by the Ethics Committee (Committee) of the WMATA Board of Directors (Board) into allegations involving former Board Chairman Jack Evans. OIG's review determined that the Board conducted its investigation properly in the context of the Board's policies and procedures for addressing allegations of ethics violations by Board members at that time. The Board conferred with WMATA's General Counsel, convened its Committee to address the allegations, and recused Mr. Evans from the process. The Committee retained the law

Washington Metropolitan Area Transit Authority

Office of Inspector General
500 L'Enfant Plaza, SW
Suite 800
Washington, DC 20024
202-962-2400

firm of Schulte, Roth, & Zabel (SRZ) to conduct the investigation and make public the findings at the conclusion of the investigation.

During this review, OIG evaluated the SRZ report **(Appendix 2)** and investigation, WMATA procurement documentation, client information, and other records associated with Mr. Evans' consulting business, and the Board's Code of Ethics. OIG interviewed witnesses relevant to the Committee's investigation, including Board members and WMATA personnel.

Upon a thorough evaluation of all relevant investigative material, OIG determined that the evidence well supported the Committee's investigative findings. The SRZ investigation was thorough, and the process was fair. In addition, OIG found that the conclusions and findings identified by the Committee and SRZ were justified.

Furthermore, on September 26, 2019, the Board adopted a new Code of Ethics for Board members. Article XIII.C.3 of the code states that, "Unless the matter can be promptly resolved as described in the immediately preceding paragraph, then the Ethics Committee will refer the matter to WMATA's Inspector General who will promptly conduct an investigation, unless the Inspector General declines to investigate for reasons of Inspector General independence or conflicts. If the Inspector General declines to investigate, the Ethics Committee will retain outside counsel to conduct the investigation." **(Appendix 3)**

The Code of Ethics provides for independent investigation and public transparency once a matter is referred to the Inspector General.

OIG also received a request by the WMATA Ethics Committee to investigate various allegations posed to OIG. Attached you will find the Board's request and OIG's response. **(Appendix 4)**

OIG's review in response to the Committee's request found no evidence that the findings of the Committee regarding Mr. Evans were not made available to the full Board. However, OIG's review did find instances where Mr. Evans stated that he wanted the findings restricted to the Committee and not released publicly. Then Board member Corbett Price too made statements and communicated with WMATA staff in support of Mr. Evans' desire to confine the findings of the investigation to the Committee. Although then Board member David Horner sided with Messrs. Evans and Price on process issues, our review found no evidence that Mr. Horner made any overt efforts to keep the Committee's findings secret or engaged in any inappropriate activity.

Throughout the Committee's inquiry and subsequent public statements concerning the Committee's finding that Mr. Evans violated the Board's Code of Ethics, Mr. Evans attempted to explain his misconduct to Committee members, and those actions were within the proper scope of his defense to the allegations. However, according to Board members and WMATA personnel involved in this matter, Mr. Evans repeatedly questioned the legitimacy of the inquiry, asserting that the inquiry should have been handled "in-house," that the SRZ report should not be provided to the full Board, and that the Committee's findings should not be made public. According to a witness, Mr.

Evans and his attorney contacted the witness repeatedly after the SRZ report was issued and complained about the process.

Following the Committee's findings that he violated the Board's Code of Ethics, Mr. Evans stated in a Board meeting that he was stepping down as Chairman so another jurisdiction could chair the Board. Mr. Evans was supposed to announce that he was resigning as Chairman because of the results of the investigation, pursuant to an understanding he had reached with the full Board to announce accurately why he was resigning. His actual statement explaining his resignation appeared to be misleading and false, and was not consistent with the understanding between him and the Board. The Board and Clarence Crawford, former Ethics Committee Chairman, subsequently issued a public statement clarifying that Mr. Evans had violated the Board's Code of Ethics. Following a May 7, 2019 Board meeting, Mr. Evans sought to have WMATA issue a statement announcing that the investigation had concluded without including any statement that the Board had found an ethics violation.

Multiple requests were made to interview former Board member Corbett Price. OIG did not receive any response to our requests. Mr. Price resigned from his position on the Board on August 30, 2019. He supported the finding that Mr. Evans committed an ethics violation. However, according to witnesses interviewed, Mr. Price was aligned with and supportive of Mr. Evans throughout the Committee's inquiry. Mr. Price disagreed with the investigative process and how the findings of the Committee were recorded and reported to the full Board. At one point during the May 7, 2019 meeting, Mr. Price referred to the ethics inquiry as a "kangaroo court."

Should you have any questions, feel free to contact me at (202) 962-1691 or RFebles@wmataoig.gov.

Respectfully,

[redacted]

Rene Febles,
Inspector General

Appendices

Appendix 1

ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

http://oversight.house.gov

September 12, 2019

The Honorable Geoffrey Cherrington
Inspector General
Washington Metropolitan Area Transit Authority
600 5th Street, N.W., 3A
Washington, D.C. 20001

Dear Inspector General Cherrington:

We are writing to request that your office review the circumstances surrounding the investigation conducted on behalf of the Ethics Committee of the Board of Directors of the Washington Metropolitan Area Transit Authority (WMATA) into Chairman Jack Evans's compliance with the WMATA Code of Ethics and Compact.

In July, WMATA produced more than 900 pages of documents detailing the findings of the Ethics Committee's investigation and related internal deliberations among WMATA staff and Board Members. Those documents are enclosed for your review.

These documents paint a disturbing picture of Mr. Evans's ethical transgressions that resulted in his resignation from the Board. These actions reportedly also may be the subject of an ongoing federal law enforcement investigation.

The documents detail efforts by Mr. Evans and another Board Member, Corbett Price, to impede the Ethics Committee's investigative process.

These actions include verbal attacks and intimidation against staff and efforts to stifle the release of the findings of the Ethics Committee's investigation.

As Chairmen of the Committee and Subcommittee with jurisdiction over interstate compacts, we request that your office review these documents and any other materials necessary for a thorough and complete evaluation of the ethics investigation of Mr. Evans's actions.

Your immediate attention to this matter would be particularly timely in light of ethics reforms under consideration by the WMATA Board, which call for an enhanced role for your office in ethics proceedings.

We appreciate your previous commitment to testify before the Subcommittee on October 22, 2019, and we thank you for your consideration of this request.

Sincerely,

Elijah E. Cummings
Chairman
Committee on Oversight and Reform

Gerald E. Connolly
Chairman
Subcommittee on Government Operations

Enclosure

cc: The Honorable Jim Jordan, Ranking Member
Committee of Oversight and Reform

The Honorable Mark Meadows, Ranking Member
Subcommittee on Government Operations

Appendix 2

Schulte Roth&Zabel LLP

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED AND ATTORNEY WORK PRODUCT

To: File **Date:** May 20, 2019

From: Adam Hoffinger
Jeffrey F. Robertson

Re: Summary of WMATA Board Ethics Committee Investigation Regarding Jack Evans Compliance With the WMATA Code of Ethics and Compact

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I. Scope of Investigation

In early March 2019, news reports appeared regarding efforts by Jack Evans to use his positions as a member of the D.C. Council and Chair of the WMATA Board of Directors to obtain outside employment and represent private clients. Following these reports, the Ethics Committee of the WMATA Board retained Schulte, Roth & Zabel ("SRZ") to conduct an independent investigation. Our mandate from the Ethics Committee was to perform an expedited investigation focused on Evans's conduct as a WMATA Board Member as governed by the WMATA Code of Ethics and the WMATA Compact. Our investigation did not concern matters related solely to Evans's service on the D.C. Council (which we understand have been the subject of a separate investigation by "BEGA," the D.C. Board of Ethics and Government Accountability), or regarding potential criminal activity (which we understand is the focus of a pending investigation by the U.S. Attorneys' Office for the District of Columbia). Our investigation was conducted over the course of approximately six weeks.

A. Documents Collected and Reviewed

We collected and reviewed documents from relevant custodians. From WMATA, we obtained copies of the Ethics Code and Compact, as well as internal documents such as emails, internal memoranda, Evans's annual disclosures, WMATA Board materials and presentations, lists of active and approved WMATA vendors, and other materials. From Evans, through his attorney, Mark Tuohey, we obtained documents previously produced to the D.C. U.S. Attorneys' Office investigation and to the BEGA, as well as copies of consulting agreements and billing records related to NSE Consulting, LLC ("NSE") the company Evans established in July 2016 to provide consulting services for clients in exchange for annual retainers. Finally, we sought and obtained from the D.C. Council email correspondence involving Evans and his D.C. Council staff. The General Counsel's Office for the D.C. Council refused to provide documents that overlapped with those produced to the U.S. Attorneys' Office or BEGA. Although we did not gain access to all D.C. Council documents that likely are relevant to our investigation, we did obtain approximately 700 documents that we believe were sufficient for us to completed our investigation, make the findings we communicated to the Ethics Committee, and to fulfill the mandate we received from the Ethics Committee.

B. Witness Interviews

We interviewed nine witnesses during our investigation:

1. *Jack Evans*[1]

[1] Our interview of Evans lasted approximately seven hours, with few brief breaks. Evans brought to the interview and gave us copies of documents concerning the drafting and editing of the 2018 business plan that he submitted to Nelson Mullins. We provided Evans the opportunity to share with us any information he wanted to. At the conclusion of the interview, we asked Evans if there was anything else he wanted to tell us and invited him to have his lawyer, Mark Tuohey, contact us at any time with any additional information, which Tuohey did.

2. *Schannette Grant*, D.C. Council Chief of Staff

3. *Phil Staub*, WMATA Ethics Officer

4. *Jennifer Ellison*, WMATA Board Corporate Secretary

5. *Dennis Anosike*, WMATA Chief Financial Officer

6. *Nina Albert*, WMATA Director of Parking Management

7. *Tim Fitzgibbon*, Head of Nelson Mullins D.C. Office

8. *Rob Hawkins*, former D.C. government lawyer at Nelson Mullins who helped Evans prepare the 2018 business plan

9. *Michael Frisch*, Ethics Counsel, Adjunct Professor of Law: Georgetown Law Center, at Evans's lawyer's request.

In addition, we met separately with Evans's lawyer twice and spoke to him by telephone several times.

II. Relevant Ethics Provisions

Our investigation of Evans's conduct focused primarily on violations of five provisions of the Ethics Code and one provision of the WMATA Compact. These provisions are discussed below.

A. WMATA Code of Ethics

1. <u>Duty to Avoid Conflicts of Interest (Article II.D)</u>

Board Members are required to "avoid conflicts of interest or appearance thereof." Board Members must "place ethical principles and compliance with the law *above private gain and personal* interest inconsistent with their responsibility to WMATA and to their respective Jurisdiction." According to the Code, "regardless of whether specifically prohibited by this Code, Members shall":

- "[E]ndeavor to *avoid conflicts of interest* or the appearance of conflicts of interest";
- "[R]efrain from *using their positions for personal profit or gain*, or for any other personal advantage";
- "[R]efrain from the appearance of *favored treatment* to any person or entity";
- "[A]void *compromising independence or impartiality*"; and

- "[A]void any other action that is likely to *adversely affect the confidence of the public in the integrity of the Board* or of WMATA."

The Conflicts of Interest provision derives its meaning from definitions included as part of the Ethics Code. Conflicts of Interest include both *Actual Conflicts of Interest* and *Apparent Conflicts of Interest*.

An *Actual Conflict of Interest* arises when "a Member or Household Member has a Substantial Interest or Duty" in: (a) an "Interested Party"; or (b) "any other Business or Property that may realize a reasonably foreseeable benefit or detriment as a result of an action or decision of the Board." Art. IV.

As relevant here, *Substantial Interest or Duty* (Art. III.L) includes any of the following:

- Ownership of interest in a business;
- Ownership of interest in or employment by a business receiving income from an interested party;
- Income or potential income greater than $1,000 annually;
- Personal Representation, defined as "personally representing or providing professional services to a Business, including legal … and consulting services, regardless of the specific subject matter of the representation …"; or
- Fiduciary duty owned by a director, officer or general partner of a business.

An *Interested Party* "means any Business that has or is seeking a contract or agreement with WMATA or that otherwise has interests that can be directly affected by decisions or actions of WMATA." Art. III.G.

Apparent Conflicts of Interest include all potential conflicts that fall short of Actual Conflicts. Apparent Conflicts arise whenever a "a Member or Household Member has any other personal interest of which the Member is aware that could reasonably appear to conflict with the fair and objective performance of the Member's official duties." Art. IV.

Both Actual and Apparent Conflicts of Interest must be resolved. Board Members with an Actual Conflict "must recuse themselves from Participating in any matter in which they have an Actual Conflict of Interest." Art. V.A. Board Members with Apparent Conflicts must also recuse themselves from Participating in matters involving Apparent Conflicts, *unless*: (1) the Member publicly declares that he is able to participate "fairly and objectively in the interest of WMATA notwithstanding the Apparent Conflict of Interest"; and (2) such declaration in lieu of recusal is approved by the Ethics Chair. Art. V.A.3 and V.B.

2. Restricted Interests (Article VI)

Board Members are prohibited from being "financially interested, either directly or indirectly, in any" transaction "to which the Board or the Authority is a party," citing Compact §10. Art. VI.A. Likewise, Board Members "shall not knowingly have a Substantial Interest or Duty in an Interested Party" while serving on the WMATA Board. Art. VI.B.

3. Duty of Loyalty (Article II.A)

Board Members owe a Duty of Loyalty to WMATA. Pursuant to this duty, Members "shall act in the *best interest of WMATA* … rather than in the Member's interest or in the interest of another person or organization with which the Members are personally associated." In addition, Board Members "shall not engage in *conduct that would bring discredit upon WMATA*." Art. II.A (emphasis added).

4. Prohibition on Seeking WMATA Staff Assistance (Art. IX.A.4)

Board Members may not request assistance directly from WMATA staff for WMATA-related matters. Specifically, the Ethics Code states that Board Members shall not "seek assistance from other WMATA personnel, while in duty status, to assist them in connection with business enterprises (including … consulting …)." Art. IX.A.4.

5. Use of Official Position (Article IX.A.1)

Board Members are prohibited from using their official positions for their own gain, or for that of others with whom they are affiliated. Board Members "shall not use, nor give the appearance that they are using, their official position with WMATA in a manner inconsistent with their responsibilities to WMATA." More specifically, Board Members shall not "[u]se their position with WMATA for":

- "[T]heir own personal financial gain";
- "[T]he endorsement of any … enterprise in which they have a Substantial Interest or Duty"; or
- "[T]he private financial gain of friends, … or individuals or entities with which they are affiliated, or with which they have or are seeking employment or business relations." Art. IX.A.1.

B. WMATA Compact

Like the Code of Ethics, the WMATA Compact also governs Board Members' conduct concerning Conflicts of Interests. Compact Section 10 prohibits Board Members from having "financial interests" in any WMATA transaction and from soliciting or accepting anything of value "in connection with" performing their official duties.

Pursuant to Section 10(a)(1), no Director, officer or employee shall "be *financially interested, either directly or indirectly*, in any contract, sale, purchase … of real or personal property to which the Board or the Authority is a party." Compact §10(a)(1) (emphasis added).

Indirect financial interest would include receiving consulting fees from an entity that is doing, or is seeking to do, business with WMATA. That is, Section 10(a)(1) applies where the entity paying consulting fees either (1) has an agreement or other business transaction with WMATA, or (2) would benefit from the termination of an existing agreement or other business transaction between a competitor of the entity and WMATA.

Pursuant to Section 10(a)(2), no Board Member, "*in connection with* services performed within the scope of his official duties, *solicit* or accept *money or any other thing of value* in addition to the compensation or expenses paid to him by the Authority." Compact §10(a)(2) (emphasis added).

"[I]n connection with" would appear to be broader than "in exchange for" (which would be limited to *quid pro quo* circumstances); that is, "in connection with" would include instances in which consulting fees or other monetary benefits were not the "but for" cause of action taken by the Board member. Likewise, the use of "solicit" means the mere *request* for money or other items of value is prohibited, even if the party from which the thing of value is requested refuses the request, or for whatever other reason the Board Member who solicits the payment does not actually receive it.

III. Factual Findings

Our investigation uncovered evidence of multiple violations of the Ethics Code and WMATA Compact by Evans related to three primary areas: (1) Evans's efforts regarding WMATA on behalf of Colonial Parking; (2) Evans's actions at WMATA to assist Digi Outdoor Communications & Digi Outdoor Media (collectively, "Digi"); and (3) Evans's 2018 business plan used in connection with his efforts to obtain a job with a private law firm.

A. Colonial Parking

As a subsidiary of The Forge Company, Colonial Parking is a parking operator located in Washington, D.C. The CEO of both Colonial and Forge is Rusty Lindner, who has been a close personal friend of Evans's for many years. Emails between Lindner and Evans and between Lindner and Evans's D.C. Council staff demonstrate that Lindner and Evans communicated regularly about a range of professional and social matters. During Evans's tenure with Squire Patton Boggs and Manatt Phelps, Forge/Colonial and/or Lindner were clients of these law firms.

1. Colonial Consulting Agreement

As of October 1, 2016, Colonial's parent, Forge, became a client of NSE, Evans's consulting firm. This consulting agreement was signed while a WMATA request for proposal

("RFP") to provide parking services for WMATA was pending. Initially, Colonial agreed to pay Evans $25,000 per year, but the amount was doubled to $50,000 a few months later, as of February 2017.[2]

The Colonial consulting agreement added two provisions that were not included in previous NSE consulting agreements. First, the Colonial agreement added a provision saying that Evans would recuse himself from D.C. Council matters involving Colonial. The addition of this provision is significant because it demonstrates that both Colonial and Evans acknowledged that Evans's work for Colonial presented the possibility of a conflict of interest. A similar provision to address potential conflicts involving Colonial and WMATA was not added, even though, as discussed below, Evans had been actively advocating on Colonial's behalf at WMATA since at least April 2015.

Second, the Colonial agreement also added a description of the "Services" that Evans would provide pursuant to the agreement. Specifically, Evans agreed to provide Colonial with "information and advice regarding the metropolitan Washington, D.C. business community, including strategic issues relating to jurisdictional competition, *transportation*, and real estate …" [6C (emphasis added)]. This definition necessarily includes matters related to WMATA.

At no point did Evans disclose to WMATA the existence or subject matter of NSE's consulting agreement with Colonial. Evans's annual disclosures identified NSE, but not the names of NSE's clients, including Colonial. Nor did Evans disclose his consulting relationship with Colonial or his close personal friendship with Lindner at any later point, including when he participated in discussions of parking-related matters at Board meetings or while Evans pursued his campaign against WMATA parking vendor Laz Parking.

Since he rejoined the WMATA Board in 2015, Evans has taken an active role in parking issues at WMATA. Our investigation uncovered evidence of a pattern of conduct by Evans designed to oust Laz as WMATA's parking vendor. During our interview, Evans acknowledged that these efforts were prompted by Lindner and were based on information that Lindner provided to Evans for the purpose of discrediting Laz, a Colonial competitor. Evans pursued an anti-Laz campaign by, *inter alia*: raising issues concerning WMATA's RFP processes; criticizing Laz and WMATA management involved in parking decisions; urging three investigations by WMATA's Office of Inspector General ("OIG") concerning allegations of fraud and corruption against Laz; and regularly sharing with Lindner updates on parking-related investigations, information and internal WMATA communications, often contemporaneously with the underlying events.

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[2] *See* Services Agreements dated as of August 1, 2016 between NSE Consulting and Digi, included in SRZ's binder of Key Documents for WMATA Ethics Committee Investigation ("Key Document Binder") at Tab 6C. Hereafter, documents that are cited in this memorandum will be referenced by their tab number in this Key Document Binder, which is being maintained as part of SRZ's files.

2. Evans Raised Concerns About WMATA's 2015 Parking RFP

On March 31, 2015, WMATA issued an RFP to provide a range of parking services that WMATA could (but was not obligated to) request from the vendor, with a response deadline of April 22, 2015. On or about April 21, 2015, Evans raised issues with WMATA General Manager Jack Requa and others concerning the manner in which the RFP was publicized, which he suggested favored the incumbent, Laz. [9A]. WMATA determined that Colonial was among the parking vendors that WMATA notified about the RFP, and was on the bidders list. According to documents we obtained from the D.C. Council, Evans also raised concerns about the RFP with the D.C. Council. [9A]. On April 22, 2015, the deadline to submit bids, the D.C. Department of Transportation requested that WMATA extend the bid deadline by four weeks. WMATA agreed to a one-week extension as "a courtesy to the Board Member who raised this issue" about the RFP. *Id*. WMATA "later determined that the request was on behalf of a WMATA Board Member, rather than an interested party." [9I].[3] During our interview, Evans acknowledged that he had raised concerns on behalf of Colonial and based on information Evans received from Lindner. In addition, Board Secretary Jennifer Ellison shared with WMATA Inspector General Helen Lew the concerns that Evans had raised. [9A]. Colonial did not submit a bid in response to the RFP. Laz ultimately was awarded the four-year contract under which it continues to provide parking services to WMATA.

3. Evans's Efforts Concerning WMATA's 2016 Parking RFP

On September 1, 2016, WMATA issued a broader parking RFP, this one to finance, operate and maintain WMATA's entire parking portfolio. The 2016 RFP was potentially quite lucrative—during 2015, WMATA generated nearly $50 million in parking-related revenue.

On September 14, 2016, the WMATA OIG received a complaint about the RFP and Lew commenced an investigation. [9B]. Colonial was among the potential bidders that attended a September 15, 2016 informational meeting WMATA held about the RFP for interested bidders. [9H]. Colonial's attendance confirms that it was attempting to business with WMATA and, therefore pursuant to the Ethics Code, Colonial was an "Interested Party" with regard to the 2016 RFP. Colonial clearly was seeking to do business with WMATA.[4]

In November 2016, WMATA canceled the RFP and fired Patrick Schmitt, WMATA Parking Director, for improperly sharing internal WMATA information with Laz Parking. In December 2016, IG Lew issued a report regarding her investigation, which concluded that Schmitt's misconduct created the appearance of a conflict and tainted the 2016 RFP. [9B].

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[3] Although we do not know for a fact who the "Board Member" was, circumstantial evidence suggests it was Evans.

[4] Colonial representatives also had at least one meeting with Nina Albert, WMATA Director of Parking, about WMATA's parking operations.

4. Evans Requested a Second Investigation By the New IG

During the first half of 2017, Geoff Cherrington replaced Helen Lew as the WMATA IG. By this time, Evans was a paid consultant for Colonial ($50,000 year). [6C]. Not satisfied with Lew's 2016 investigation, Evans asked the new IG to conduct his own investigation re: Laz, which he did. In his July 27, 2017 report, Cherrington concluded that no additional action was warranted for two reasons: first, the 2016 RFP had been withdrawn and WMATA had no plans to reissue it; and second, Schmitt had been terminated and replaced as WMATA Parking Director. [9C].

5. Following the OIG Budget Request, Evans Requested Another Investigation

On July 31, 2017 (a few days after issuing his July 27 report), Cherrington requested that WMATA's Board double the OIG's operating budget and change the reporting structure to give the OIG greater independence. Cherrington's request was emailed to Evans. [9D]. During the morning of August 3, 2107, Evans forwarded Cherrington's budget request directly to Lindner. *Id*. That afternoon, Evans again asked Cherrington to investigate Laz. The subject of Evans's email to Cherrington was "WMATA Parking Historical Problems." In it Evans complained about "*inappropriate emails between the Parking Department and Laz* representatives while the RFP was underway. *To me, where there's smoke, there's often fire." Id*. (emphasis added). Evans concluded his email by requesting a meeting with Cherrington "to discuss this serious matter further." *Id*. Cherrington responded that same day from a family vacation and agreed to meet with Evans after Cherrington returned from vacation. *Id*. Just after midnight (at 12:16 a.m.), Evans forwarded Cherrington's response to Lindner. *Id*.

The following day, Cherrington again responded to Evans's email requesting another OIG parking investigation. In this email, which he sent on August 4, 2017 at 12:25 pm, Cherrington told Evans that he had reviewed the information Evans sent, discussed it with his OIG staff, and would be opening an investigation. *Id*. Twenty minutes later (at 12:46 pm), Evans forwarded Cherrington's email to Lindner. *Id*.

6. May 2018 Board Discussions About Parking Issues

During May 24, 2018 WMATA Board meetings, the Board heard a presentation by an outside consultant regarding its analysis of WMATA's parking portfolio. [9E]. Evans attended and participated in these Board discussions. [9F]. At no time did he disclose his consulting agreement with Colonial, his close friendship with Colonial's CEO, his efforts on behalf of Colonial at WMATA, or any potential conflict of interest.

7. Evans's Efforts On Behalf of Colonial Were Not Limited to RFPs

As noted, Colonial had been a client at Manatt when Evans worked there, including in late 2015, and Evans has been a close friend of Lindner's for many years. In November 2015, Lindner emailed Evans requesting average weekday WMATA ridership, comparing 2013 to 2015. [9G]. In response, Evans's D.C. Council staff (Communications Director Tom Lipinsky) emailed to Lindner what Lipinsky described as "rich data on daily ridership from WMATA from 2011-2014." *Id*. While the response was from Lipinsky, Evans was copied on it. Several days later, Lipinsky forwarded additional and "updated" WMATA daily ridership data to Lindner, in a spreadsheet titled "Rail Ridership by Day and Half Hour – May 2011 – 2015." *Id*. Again, Lipinsky copied Evans on his email to Lindner. Our investigation uncovered evidence that at least some of the information Evans's staff provided to Lindner was not publicly available.[5]

8. WMATA Code and Compact Violations Regarding Colonial

Based on the foregoing conduct, Evans violated the following provisions of the Ethics Code and the WMATA Compact:

- Code Violations
  - Evans violated his Duty to Avoid Conflicts (Art. II.D):
    - Evans did not disclose his consulting agreement with Colonial (i.e., an Actual Conflict of Interest).
      - Colonial was an "Interested Party" under Code Art. III.G as a party "seeking a contract or agreement with WMATA or otherwise has interests that can be directly affected by decisions or actions of WMATA."
    - Evans did not disclose close personal friendship with Lindner (i.e., an Apparent Conflict of Interest).
  - Evans violated his Duty of Loyalty (Art. II.A):
    - By working to benefit his friend Lindner and consulting client Colonial, Evans placed the best interests of these parties above the best interests of WMATA.
  - Evans violated the ban on Seeking Assistance of WMATA Personnel (Art. IX.A.4):

[5] Had Lipinsky been providing publicly available ridership data, it seems likely that he would have simply provided a link to the data on the WMATA web site.

    - By, among other things, waging a campaign against Laz, including repeatedly initiating investigations by WMATA's OIG, and seeking information from WMATA personnel to be shared with Colonial (ridership, etc.).

  - Evans used his Official Position for Personal or Private Gain (Art. IX.A.1):

    - By repeatedly and proactively taking action that would benefit Colonial and Lindner, at or during the same time that Evans was being paid $50,000 per year, Evans improperly used his position at WMATA for his own personal financial gain and/or for the private financial gain of his close friend Lindner and Colonial by virtue of Evans's consulting agreement.

  - Evans violated the prohibition regarding Restricted Interests as set forth in the Compact (Art. VI):

    - By being financially interested and having a Substantial Interest in an Interested Party.

- Compact Violations

  - Through his Colonial consulting agreement:

    - Evans had a financial interest in WMATA's existing business relationship with Laz Parking, in violation of Compact Section 10(a)(1).

    - Evans solicited and accepted money "in connection with" his official duties, in violation of Compact Section 10(a)(2).

B. Digi

Our investigation also uncovered evidence of Evans's conduct concerning Digi Outdoor Communications and Digi Outdoor Media (together, "Digi"), related companies affiliated with Don MacCord that were in the business of installing and operating signs to display digital advertisements. In some respects, the Digi situation is similar to Colonial. Both involved undisclosed consulting agreements and efforts Evans undertook directly or indirectly with WMATA on behalf of his consulting client. The primary difference is that the duration of the consulting agreement with Digi and Evans's WMATA-related efforts for Digi were more abbreviated than for Colonial.

1. Digi Consulting Agreements

On or about August 1, 2016, Digi executed two consulting agreements that Evans prepared and under which Digi agreed to pay NSE $50,000 per year. [6A]. With checks dated August 11, 2016, Digi paid NSE $50,000. *Id*. Evans departed for vacation on August 12, 2016, and returned on August 21, 2016. On August 18, 2016, Evans's D.C. Council staff emailed Barbara Richardson, a WMATA employee, and requested that WMATA personnel help Digi with after-hours access to Metro property to install signs. Evans was copied on the emails to and from WMATA. [11]. By letter dated August 25, 2016, Evans returned the $50,000 in checks to Digi without cashing them. [6A].[6]

2. Request For WMATA Assistance For Digi

The timing of the request for assistance on Digi's behalf is significant for two reasons. First, the request was after Digi signed the consulting agreement and issued checks to Evans, but before Evans returned the checks and notified Digi that he would not move forward with a consulting arrangement. Second, we understand that during this same period of time WMATA was taking steps to erect its own digital signs and was competing with Digi for advertising revenue. To the extent Evans's staff was seeking to assist Digi to install its signs, it was placing the interests of Evans and Digi above those of WMATA.

Evans did not disclose to WMATA—on his annual disclosures or otherwise—his consulting arrangement with Digi. For reasons that are not clear, in October 2016 Digi issued to NSE a stock certificate for 200,000 Digi shares. According to Evans, he returned the stock certificate to Digi.

3. WMATA Code and Compact Violations Regarding Digi

Based on the foregoing conduct, Evans violated the following provisions of the WMATA Ethics Code and Compact:

- <u>Code Violations</u>
    - Evans violated his Duty to Avoid Conflicts based on his undisclosed consulting agreement with Digi (Art. II.D).

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[6] Evans's letter claims that he had only recently discovered a controversy involving Digi and the D.C. government, and that dispute created a "potential conflict" that precluded his moving forward with a consulting relationship with Digi. According to news accounts, however, the D.C. government's dispute with Digi had been brewing for much of 2016. *See, e.g.*, "Ethics Officials Examine D.C. Lawmaker's Business Ties to Digital Sign Company," WASH. POST, May 7, 2018; "D.C. Council Member Jack Evans Received Stock Just Before Pushing Legislation That Would Benefit Company," WASH. POST, Dec. 20, 2018. Several days after Evans returned the checks, the D.C. Attorney General filed a lawsuit against Digi in D.C. Superior Court.

- Evans violated the ban on Seeking Assistance of WMATA Personnel by requesting WMATA's assistance on behalf of Evans's client Digi (Art. IX.A.4).
- Evans used his Official Position for Personal or Private Gain (Art. IX.A.1).
- Evans violated his Duty of Loyalty (Art. II.A).
- Evans violated the prohibition regarding Restricted Interests (Art. VI).

o Compact Violations

- Evans violated Compact Section 10(a)(2) by soliciting or accepting money "in connection with" his official duties through his consulting agreement.

C. Evans's Other Consulting Agreements

According to Evans, in 2016, he asked his friend, Ron Paul, the CEO of Eagle Bank, for a job. At the time, Eagle Bank was an existing vendor of WMATA (and still is to this day). Evans indicated that he was not aware that Eagle Bank had a banking relationship with WMATA, or that WMATA had increased the funds it maintained at Eagle Bank from $4 million to approximately $24 million as of 2019.

Paul declined to hire Evans as an employee. Instead, he suggested that Evans become a consultant. In July 2016, Evans formed NSE, through which he intended to provide consulting services. As of August 1, 2016, Eagle Bank and a corporation owned by Paul signed consulting agreements with NSE. [6B]. Pursuant to those agreements, NSE would receive more than $50,000 per year. *Id*. A year later, the amount was increased to $100,000 per year. *Id*.

Evans approached other friends/clients and requested they pay him as a consultant. Ultimately Evans had consulting agreements with ten separate entities. Each of NSE's consulting clients was owned by, or affiliated with, one of six individuals with personal, business and/or social relationships with Evans. At least one client (i.e., Eagle Bank) was a WMATA vendor, and others (i.e., Colonial and Digi) sought to do business with WMATA. In total, Evans's consulting clients agreed to pay him $325,000/year.[7] [6A-6F]. At no time did Evans disclose any of these consulting agreements to WMATA.

[7] This amount includes the $50,000 checks that Evans returned to Digi.

EVANS'S NSE CONSULTING AGREEMENTS			
Key Individual	*Entities*	*Agreement Date(s)*	*Amount*
Don MacCord	Digi Media Digi Comm.	8/1/16	$50,000
Ron Paul	Eagle Bank RDP Mgmt.	8/1/16 8/1/17	$100,000
Rusty Lindner	Forge	10/1/16 2/20/17	$50,000
Anthony Lanier	EastBanc Inc. EastBanc Tech. Squash on Fire	11/1/16 1/1/17 1/1/18 7/1/18	$25,000
Richie Cohen	Willco	12/1/16 12/1/17	$50,000
Steven Fischer	Fischer Holdings	3/1/18	$50,000

D. Consulting Services Provided by Evans

During our interview, Evans was vague about what services he actually provided pursuant to his consulting agreements. According to Evans, the agreements permitted clients to consult with Evans as needed. In some instances, he said the client did not consult him at all, while in others, he regularly provided advice.

Beyond the evidence related to Evans's WMATA-related efforts for Colonial and Digi, our investigation uncovered an email between Evans and his accountant that demonstrates Evans was providing some kind of services to his clients. In connection with Evans's 2016 tax return, Evans's tax preparer asked Evans via email "were there any expenses incurred to offset the [NSE] income"? [7B]. Evans responded, "I believe these expenses could be used to offset NSE income" and listed the following expenses totaling $34,560:

- Car ($11,315)
- Chevy Chase Country Club ($8,427)
- Economic Club ($3,487)
- Metropolitan Club ($3,300)
- Gas ($2,194)
- Travel ($2,000)
- Restaurant ($2,000)
- Clothes ($1,302)
- Papers ($534)

To the extent that these were legitimate NSE business expenses, this correspondence suggests that Evans must have performed services for clients with whom he had consulting agreements.

Perhaps the best evidence of what Evans intended to do and did for his consulting clients, however, is the business plan he submitted to Nelson Mullins in 2018 in order to obtain employment.

E. Evans's 2018 Business Plan

Since he was first elected to the D.C. Council, Evans has worked part-time at private law firms. From 2002 to 2015, Evans worked at Squire Patton Boggs. From 2015 until 2017, Evans worked at Manatt Phelps. As of November 2017, Evans was no longer employed at Manatt and was searching for a similar position.

In late 2017 or early 2018, Evans attempted to convince Nelson Mullins, a South Carolina-based firm with a D.C. office, to hire him. After Evans's initial discussions with the firm, Nelson Mullins remained uncertain about what Evans would bring to the firm or offer to its clients. As a result, Nelson Mullins asked Evans (as the firm says it typically does for lateral candidates) for a written business plan describing how Evans intended to develop business, attract clients to the firm and help with the firm's existing client base. In essence, the business plan was intended to convince firm management outside D.C., who would not be familiar with Evans, why hiring Evans made sense.

A Nelson Mullins lawyer, Rob Hawkins, was enlisted to help Evans prepare a business plan. Hawkins knew Evans from working at the D.C. Council and for Mayor Bowser. Hawkins prepared a draft entitled "Business Development Strategy," which he forwarded to Evans on January 29, 2018. [3B].

In the email sending the draft to Evans, Hawkins stated:

> "the narrative portion is mostly complete but there are some blanks for you to fill out, which are highlighted. Feel free to edit as you please, or to suggest major revisions, if necessary."

Evans reviewed the draft and made edits throughout the document. [3C]. But he did not edit, alter or delete any of the specific statements that on their face are improper under WMATA ethics provisions. During our interview, Evans acknowledged his responsibility for the language in the plan, and with the benefit of hindsight, expressed regret for the language.

1. Improper Statements Contained in Evans's Business Plan

On its face, the 2018 business plan Evans submitted to Nelson Mullins on January 31, 2018 violates the WMATA Ethics Code and Compact. The plan makes clear Evans's intent to use his position at WMATA for his own private gain. For instance, Evans says he intends to "leverage[e] my contacts and relationships" "developed as the Chairman of WMATA." [D3, p. 3]. The plan also claims that Evans was "uniquely positioned" to "cross-market[] my relationships and influence" developed as the Chairman of WMATA. *Id*. Moreover, the plan contemplates that Evans would solicit potential clients including WMATA active and prospective vendors such as Colonial Parking. *Id*. The plan states that Evans planned to develop business by partnering with other law firms including active WMATA vendors Arent Fox, Venable and Holland & Knight. *Id*.

Recently, the D.C. Council reprimanded Evans and found ethics violations on the face of Evans's business plan—without conducting any investigation, and without the benefit of knowing that Evans was invited and had multiple opportunities to modify the facially violative language but did not do so. [18].

2. WMATA Code and Compact Violations Regarding Evans's 2018 Business Plan

Based on the foregoing conduct, Evans violated the following provisions of the Ethics Code and the WMATA Compact:

- <u>Code Violations</u>
  - By offering his services to leverage his WMATA connections for Nelson Mullins, Evans violated the prohibition on using his official position for his financial gain, or the private financial gain of others with whom he was affiliated (Art. IX.A).
  - Evans violated the prohibition regarding Restricted Interests by violating Compact Section 10(a) (Art. VI).
- <u>Compact Violations</u>
  - The business plan violated Compact Section 10(a)(2) by soliciting something of value (a job) "in connection with" Evans's official duties.

F. Evans Knowingly Violated the WMATA Code and Compact

The evidence uncovered through our investigation demonstrates that Evans's ethical violations occurred not by accident, but "knowingly."[8] Numerous factors support this conclusion about Evans's state of mind. For example, Evans has been a practicing lawyer for nearly 40 years, during which time he has completed regular ethics training courses. After rejoining the WMATA board, Evans has received annual in-person ethics training from 2015 through 2018. Since January 2016, Evans has served as the Chairman of the WMATA Board of Directors, the Executive Committee and the Ethics Committee. Through the Ethics Committee, Evans has been personally involved in WMATA ethics investigations, as he repeatedly noted to us and the Ethics Committee.[9]

In addition, the Ethics Code requires WMATA directors to complete annual disclosure forms reporting "employment, fiduciary positions, and substantial interests." Art. X.A. The WMATA Ethics Officer reviews these disclosures and advises each Director how to monitor and avoid potential Conflicts of Interest and other ethical issues based on the Directors' individual disclosures. Among other things, the Ethics Officer memoranda:

- Remind Directors of their obligations to (*i*) monitor for potential Conflicts of Interest and (*ii*) update their disclosures as necessary;
- Note that the Appearance of a Conflict of Interest may arise from "matters unrelated to Substantial Interest or Duties, such as close friendships and past business relationships"; and
- Observe that "[i]nterests that fall just shy of being reportable on your disclosure form" may also create the Appearance of a Conflict of Interest.

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[8] Black's Law Dictionary defines "Knowingly" as "With knowledge; consciously; intelligently; willfully; intentionally. A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result."

[9] These include a 2016 investigation related to Patrick Schmitt and Laz Parking (regarding sharing WMATA parking information with Laz) and a 2015 investigation concerning Mort Downey (concerning his consulting relationship with Parkinson & Brinckerhoff). Evans was also aware of a highly-publicized ethics investigation concerning former WMATA Board Member and D.C. Council member Jim Graham's efforts to circumvent normal channels and to barter WMATA's Florida Avenue project with a D.C. Lottery project pending before the D.C. Council.

The Ethics Officer memoranda to Evans (which we reviewed) specifically state:

> "[T]he Code of Ethics includes personal representation as a type of interest. This means [*any party for which*] [*anyone for whom*] you provide professional services, regardless of the matter or compensation received, can give rise to a conflict. Please ensure you have reported [*all parties*] [*all people and businesses*] for which you provide professional services, or, if that is impractical, update your disclosures and recuse yourself whenever such a party [*becomes a prospective party to a WMATA financial transaction*] [*seeks a contract or agreement with WMATA*], has interests that can be directly affected by WMATA or may realize a benefit or detriment from Board Action. It is also possible that personal representation will result in the Appearance of a Conflict of Interest."

Moreover, the Ethics Code and the Ethics Officer memoranda make clear that Board Members have a continuing obligation to update their disclosures as their circumstances change.

During our interview, Evans said he had no recollection of having seen the Ethics Officer's memoranda regarding his annual disclosures. He surmised that he did not recall these memoranda because they may have sent to him through Diligent, the information-sharing platform WMATA uses to circulate materials to Board Members, which Evans said he rarely used. However, both the WMATA Ethics Officer and Board Secretary told us that the Ethics Officer's memoranda were delivered to Evans by email, not through Diligent.

Combined with the general guidance already discussed, the discussion of personal representation issues in the Ethics Officer's memoranda put Evans on notice that:

- Even though Evans was not required to list on his annual disclosures the names of the clients for whom Evans provided legal, consulting or other professional services, those clients nonetheless could give rise to potential Conflicts—Actual or Apparent;

- For conflict purposes, it did not matter whether Evans's work for a client was related to that client's WMATA-related interests;

- In light of these possible Conflicts of Interest, Evans could either disclose the names of his individual clients OR update his disclosures and recuse himself whenever a client developed interests that may be impacted by WMATA; and

- The Code requires recusal whenever there is an Actual Conflict or an Apparent Conflict.

Notwithstanding the extensive evidence of his knowledge of his ethical obligations, Evans never recused himself while serving on the WMATA Board.

IV. Conclusion

Our investigation, conducted in accordance with the mandate we received from the Ethics Committee of the WMATA Board, provides a snapshot of Evans's conduct, and how it violated WMATA's ethics rules. His personal representations—of his clients and close personal friends—violated his ethical duties as the Chair of the WMATA Board. He solicited and accepted money to serve the interests of his clients and friends—putting their interests above those of WMATA—like Colonial Parking/Rusty Lindner, Digi and perhaps others (e.g., Eagle Bank/Ron Paul), many of whom were actual or potential WMATA vendors, with business interests that intersected with WMATA's interests, and could be served by certain actions or decisions of WMATA or its Board.

Our investigation uncovered a pattern of conduct in which Evans attempted to and did help his friends and clients and served their interests, rather than the interests of WMATA. For example, he waged an extensive campaign against Laz Parking on behalf of Colonial Parking. He repeatedly urged and caused the WMATA OIG to investigate Laz Parking, for which efforts Colonial was the natural beneficiary. He shared WMATA communications regarding parking issues, ridership data and other information with Lindner, Colonial's CEO, on a regular basis, sometimes virtually contemporaneously with the events themselves. He sought assistance for Colonial and Digi from WMATA personnel.

Any questions about Evans's intentions are answered by his 2018 business plan which he used to try and convince a law firm to hire him. He represented to that firm, Nelson Mullins, that he could generate work for the firm by "leveraging" his contacts and relationships developed as the Chairman of WMATA, and by cross-marketing his "relationships and influence" developed as the Chairman of WMATA.

And any questions about what clients Evans was proposing and intending to bring to that law firm are answered in the business plan where Evans specifically lists these clients, with Colonial Parking at the top, as well as other current and potential WMATA vendors. [*See* 3D, p. 3].

What Evans offered and was selling to Nelson Mullins (and presumably to the law firms he previously worked for) was precisely the type of services he performed for his friends and clients while serving as a WMATA Board Member—as the Chairman of its Board, Executive Committee and Ethics Committee.

Evans did not disclose his consulting and personal relationships, and he did not recuse himself from any WMATA-related transactions, discussions, or issues.

Through this conduct, Evans violated the WMATA Code of Ethics and the WMATA Compact.

Appendix 3

CODE OF ETHICS

FOR MEMBERS OF THE WMATA BOARD OF DIRECTORS

Article I: Policy and Scope

The Board and leadership of the Washington Metropolitan Area Transit Authority ("**WMATA**") are responsible for fostering high ethical standards for WMATA and its officers and employees, thereby strengthening public confidence that WMATA's programs are conducted with impartiality and integrity. The Board adopts this Code of Ethics ("**Code**") to assure the highest degree of confidence and public trust in WMATA, and that the judgment of Board Members will not be compromised or affected by conflicting interests. If the Board determines that a Board Member has knowingly violated this Code, the Board may take appropriate action as specified herein.

This Code governs the conduct of all Directors and Alternates of the Board of Directors in all their activities relating to their positions as Board Members. It also applies to all individuals, corporations and other entities in their dealings with WMATA. This Code does not supersede or abrogate any laws, rules or regulations of the United States or of the Jurisdiction of the Board Members.

Article II: Board Members' Fiduciary Duties

The WMATA Compact ("Compact") § 4 establishes WMATA as a body corporate and politic and an instrumentality and agency of each of the signatory parties (District of Columbia, Maryland, and Virginia). As a result, Board Members owe fiduciary duties to WMATA and to their respective Jurisdiction.

A Board Member's fiduciary duties include separate duties of loyalty, confidentiality, care and to avoid conflicts of interest and to earn and retain public trust through loyal, diligent, honest, faithful, and disinterested service.

A. Duty of Loyalty

Board Members shall act in the best interests of WMATA and their respective Jurisdiction in carrying out their duties as Board Members, rather than in the Member's interest or in the interest of another person or organization with which the Board Members are personally associated. Board Members also shall not engage in conduct that would bring discredit upon WMATA. Board Members owe their duties of loyalty to WMATA and to their respective Jurisdiction and not to any other person or organization.

B. Duty of Confidentiality

Board Members owe a duty of confidentiality to WMATA and to their respective Jurisdiction. Board Members shall keep confidential all matters involving WMATA and their respective Jurisdiction that have not been disclosed to the public except as described herein.

Board Members may disclose information obtained in their capacity as Board Members (including information obtained in Executive Session) to the leadership of their respective Jurisdiction. Board Members should request that the leadership of their Jurisdiction treat disclosed confidential information in a manner consistent with its sensitive nature. Leaders of the Jurisdiction will use their discretion in treating the information in a confidential manner consistent with the sensitive nature of the information disclosed. Any information that includes an actual or prospective personnel action, personnel evaluation or any other personnel information the disclosure of which is restricted by applicable statute shall be disclosed only pursuant to agreement of the recipient to maintain the confidentiality of such information.

C. Duty of Care

Board Members owe a duty to their respective Jurisdiction to provide liaison continuously and comprehensively with regard to plans, policies, and actions requiring consideration in the planning for transit and in the development of planned transit facilities. Board Members shall make reasonable efforts to be diligent, attentive, and prudent, including giving due consideration of matters before making decisions for WMATA. Board Members shall exercise their duty of care in the interests of WMATA, their respective Jurisdiction and the public, and therefore consider the views and policies of public officials, government bodies, and other individual stakeholders during the decision-making process. Once a decision has been voted by the Board, Board Members shall work together to implement that decision.

D. Duty to Avoid Conflicts of Interest

Board Members shall avoid conflicts of interest and place ethical principles and compliance with the law above private gain and personal interest inconsistent with their responsibility to WMATA and to their respective Jurisdiction. Regardless of whether specifically prohibited by this Code, Board Members shall endeavor to avoid conflicts of interest, refrain from using their positions for personal profit or gain, or for any other personal advantage; refrain from the appearance of favored treatment to any person or entity; avoid compromising independence or impartiality; and avoid any other action that is likely to adversely affect the confidence of the public in the integrity of the Board or of WMATA.

Article III: Definitions

Capitalized terms in this Code are defined as follows:

A. "**Board Member**" means a Director or Alternate of the Board of Directors of WMATA.

B. "**Business**" means a sole proprietorship, corporation, partnership, company, joint venture, association, joint stock company, or any other form of entity recognized by law that is engaged in trade, commerce, or the transaction of business, and any parent of a business entity. A "parent of a business entity" owns or controls more than fifty percent (50%) of that entity (i.e., by value or voting power).

C. "**Business Associate**" means a person who is engaged with a Board Member in a venture expected to result in a benefit to the Board Member or any of the Board Member's

Household Members in the form of money or other thing of value.

D. "**Financial Transaction**" means any arrangement from which a Business or individual anticipates receiving or transferring money or any other thing of value including, but not limited to, arrangements for purchase, sale, lease or other transfer or conveyance of any interest in real or personal property; construction or improvement of any facility or property; and procurement of services, both personal and consulting.

E. "**Gift**" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, other item having monetary value, or similar consideration for which the recipient does not pay market value or that is not offered to the public generally. A gift therefore includes, but is not limited to, cash, a meal, merchandise, services, admission to a sporting event, admission to a theatrical, musical or other spectator event, admission to an event or activity in which persons are participants (e.g., a conference or golfing event), travel, transportation and lodging. It does not matter whether a gift is provided to the recipient in kind or in the form of a ticket, a payment in advance or a reimbursement of an expense that has been incurred; in all these cases, the benefit provided is considered a Gift.

F. "**Household Member**" means a Board Member's spouse, domestic partner, any dependent child within the meaning of Section 152 of the Internal Revenue Code living in the Board Member's household, and any other relative over whose financial affairs the Board Member has substantial legal or actual control.

G. "**Interested Party**" means any Business that has or is seeking a contract or agreement with WMATA, has interests that can be directly affected by decisions or actions of WMATA, or may realize a reasonably foreseeable benefit or detriment as a result of an action or decision by the Board.

H. "**Jurisdiction**" means the Signatories to the Compact (Maryland, Virginia and the District of Columbia), the bodies authorized by the Compact to appoint Board Members, and the counties, cities and political subdivisions that Board Members represent.

I. "**Participate**" means to vote, address, discuss, or otherwise attempt to influence a decision of the Board of Directors or any action undertaken by WMATA staff.

J. "**Property**" means real property, including land, together with any structures improvements, and any rights or interests in land and/or improvements.

K. "**Prohibited Source**" means an Interested Party or a Business or individual offering a Gift because of the Board Member's position on the WMATA Board of Directors. For the purposes of this definition, "Business" also includes the officers, employees and agents of the Business.

L. "**Relative**" means a relation of the Board Member who is not a Household Member and is a: father, mother, grandfather, grandmother, child, granddaughter, grandson, brother, sister, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son in-law, sister-in-law or brother-in-law.

M. “**Substantial Interest or Duty**” means any of the following:

1. Ownership of Interest in a Business. Ownership interest (e.g., shares of stock or other securities) in a Business that exceeds three percent (3%) of the total equity of the Business, has a fair market value greater than $15,000, or yields more than $1,000 in annual income.

2. Ownership of Interest in Property. Ownership interest in Property, other than a primary residence, that has a fair market value greater than $15,000 or yields more than $1,000 in annual income.

3. Ownership of Interest in or Employment by a Business Receiving Income from an Interested Party. Employment by or Ownership of Interest in a Business receiving revenues from an Interested Party of at least $10,000 or three percent (3%) of the Business’s gross income for its current or preceding fiscal year, whichever is greater.

4. Income. Income in any form (whether or not deferred) from a Business or Property, including, but not limited to, wages, salaries, fringe benefits, interest, dividends, or rent that exceeds or may reasonably be expected to exceed $1,000 annually. Income also includes potential income; for example, from an upcoming job or offer of employment with a Business.

5. Pledge or surety. Personal liability (incurred or assumed) on behalf of a Business that exceeds the lesser of three percent (3%) of the asset value of the Business or $1,000.

6. Loan or debt. Personal indebtedness of $1,000 or more to a Business, except a debt incurred in the ordinary course of business on usual commercial terms (e.g., a mortgage liability secured by a personal residence of the Board Member or the Board Member's spouse; a loan liability secured by a personal motor vehicle, household furniture, or household appliances; a personal revolving line of credit or capital contribution loan liability; a debit, credit or other revolving charge account liability).

7. Personal Representation. Personally representing or providing professional services to a Business, including legal, audit, accounting, financial, and consulting services, regardless of the specific subject matter of the representation or amount of compensation received.

8. Fiduciary Duty. The duty owed to a Business by a director, officer or general partner of the Business, even without financial remuneration from the Business.

9. Imputed Interest. The financial and other interests in a Business or Property held by Household Members are imputed to the Board Member.

Exclusions. The following interests are excluded from “Substantial Interest or Duty”: checking or savings accounts; money market accounts and other demand deposits; government bonds; certificates of deposit; government employment; and diversified mutual funds, pension plans, employee benefit plans, trusts, estates and other similar funds, plans and entities administered by an independent party without participation by the Board Member or Household Members in the selection or designation of financial interests held by the fund, plan or entity.

Article IV: Conflicts of Interest

A Conflict of Interest arises whenever a Board Member's ability to perform his or her duties fairly and objectively would be compromised, including but not limited to a Board Member having a Substantial Interest or Duty in an Interested Party.

Article V: Resolving Conflicts of Interest

A. Recusal

1. Board Members with a Conflict of Interest shall recuse themselves from Participating in any matter in which they have a Conflict of Interest, unless they make a Declaration in accordance with this Article.

2. Board Members shall recuse themselves when Participating would otherwise violate this Code, such as decisions by the Board or WMATA to hire, appoint, employ or promote, or to enter into a Financial Transaction with a Relative of the Board Member under Article IX.B.2, or when Participating would violate a law to which they are subject.

3. A Board Member will promptly notify the Board or Committee Chair before whom the matter is being considered of the recusal. The Board Member will also cause the Board's official records to reflect the Board Member's recusal from participating in the matter. The fact of the conflict and recusal shall be publicly announced at any meeting of the Board or a Committee at which the matter is considered.

4. A Board Member shall not at any time Participate in, attempt to Participate in, or discuss with other Board Members or WMATA personnel, any matter from which the Board Member is recused. (Members may, however, consult the Ethics Officer regarding compliance with the provisions of this Code at any time.) The Board Member may remain present for any public portion of a meeting at which the matter is considered, provided the Board Member does not remain at the Board or committee table or dais during the discussion and consideration. The Board Member may not attend any portion of an executive session closed to the public at which the matter is considered.

B. Declaration in Lieu of Recusal

If a Board Member believes that he or she is able to participate in a matter fairly and objectively in the interests of WMATA notwithstanding a Conflict of Interest, the Board Member may Participate in the matter after obtaining a recommendation from the Ethics Officer and approval of the full Board. If the full Board approves the Board Member's participation, the Board member shall make a Declaration in Lieu of Recusal. In the Declaration the Member shall explain: (1) the nature of the Board Member's personal interest in the parties or matter, and (2) why the Board Member is able to Participate in the matter fairly and objectively in the interest of WMATA. The Declaration in Lieu of Recusal will be effective upon concurrence by the full Board. The presiding Chair will read the approved Declaration into the record at any meeting of the Board or a Committee at which the matter is considered prior to action being taken.

C. Facilitating Compliance with Conflicts of Interest Restrictions

1. In order to facilitate compliance with the conflicts of interest provisions of this Code, the Board Secretary shall include in the materials mailed to the Board or Committee a list of Interested Parties in matters scheduled for consideration at the upcoming meeting.

2. Boards Members are entitled to rely on the accuracy of information supplied to them by the Board Secretary pursuant to this subsection as one source of information to identify Conflicts of Interest; provided, however, that Board Members have a continuing obligation to identify and disclose any sources of Conflicts of Interest.

3. Board Members shall review the information at the time it is supplied against their current holdings, and shall, as necessary, either recuse themselves from Participating in any matter in which they have a Conflict of Interest or make a Declaration in Lieu of Recusal regarding the matter.

Article VI: Restricted Interests

A. Board Members are prohibited from being "financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party." Compact § 10.

B. Board Members and Household Members shall not knowingly have a Substantial Interest or Duty in an Interested Party during the Board Member's term of service, unless it is resolved in accordance with Article V.

Article VII: Gifts

A. Non-Solicitation

1. Board Members shall not, "in connection with services performed within the scope of [their] official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to [them] by the Authority." Compact § 10.

2. Board Members shall not solicit a Gift from a Prohibited Source or from any WMATA employee, except when soliciting the general public by mass communication or other widely-distributed means that may incidentally be addressed to or include Prohibited Sources or WMATA employees.

B. Limits Upon Accepting Gifts

1. Board Members and Household Members may not accept a Gift from a Prohibited Source, except as specifically permitted by the exceptions set forth in Appendix 1 to this Code. In addition, Board Members and Household Members should not accept Gifts even though permitted by an exception, on such a frequent or regular basis that a reasonable person could be led to believe they are using their position with WMATA for personal gain or are not performing the duties of their position in an impartial manner.

2. Board Members may not designate, recommend or otherwise specify that a Gift be provided to or accepted by another Business or individual.

3. Board Members are encouraged to seek the Ethics Officer's advice when determining whether a particular offer may constitute a Gift that may not be accepted.

4. A Board Member who has received a Gift that may not be accepted under this Code shall do one of the following: pay the giver the Gift's market value; return the Gift to the giver; or in cases where returning the gift is impracticable, deliver the gift to the Ethics Officer, who will make proper disposition of it. Market value may be estimated by reference to the retail cost of similar items or services of like quality. The Ethics Officer should be consulted when estimating the market value of a gift. Subsequent reciprocation by the Board Member to the giver does not constitute payment of the market value of a gift.

Article VIII: Bona Fide Religious, Charitable and Political Contributions

Provided all other provisions of this Code are satisfied, a Board Member or Household Member may solicit bona fide religious, charitable and political contributions. A Board Member may accept such contributions only to the extent consistent with the law of the Board Member's Jurisdiction and where it cannot reasonably be inferred that the contribution is offered in an effort to influence the Board Member's action upon a WMATA matter or offered as a reward for the Board Member's action upon a WMATA matter.

Article IX: Use of Official Position

A. Use of Official Position

Board Members shall not use, nor give the appearance that they are using, their official position with WMATA in a manner inconsistent with their responsibilities to WMATA and their respective Jurisdiction. Board Members shall not:

1. Use their position with WMATA for their own personal financial gain, for the endorsement of any product, service or enterprise in which they have a Substantial Interest or Duty, or for the private financial gain of friends, relatives, individuals, or entities with which they are affiliated, including nonprofit organizations of which they are officers or members, or with which they have or are seeking employment or business relations;

2. Use or permit others to use information not generally available to the public obtained from WMATA through the Board Member's official position with WMATA to further the Substantial Interests or Duties of a Board Member, a Household Member, a Board Member's Business Associate, or any Interested Party;

3. Disclose or permit others to disclose to anyone outside WMATA other than to staff of their respective Jurisdiction information obtained through their official position with WMATA and not generally available to the public except where and to the extent necessary to fulfill the Board Member's Fiduciary responsibilities; provided, however, that disclosure of confidential information shall be made only in accordance with the terms of Article II (B);

4. Use WMATA property other than for authorized purposes, nor seek assistance from other WMATA personnel, while in duty status, to assist them in connection with business enterprises (including self-employment, home-based businesses, consulting, purchase or sale of real estate or other professional services) or personal matters (non-WMATA matters including a Board Member's social, religious or educational interests);

5. Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in their employment with the Authority (Compact § 10); or

6. Receive compensation from WMATA except for reimbursement for necessary expenses incurred incident to the performance of their duties, in accordance with and to the extent permitted under WMATA's expense reimbursement policies. Board Members are expected to exercise prudence when incurring expenses in connection with official duties.

B. Influence with Regard to Household Members and Relatives

1. No Board Member or Household Member shall be employed by WMATA during the Board Member's term of service. In addition, no Board Member, Household Member, or Business that is wholly or substantially owned or controlled by a Board Member or Household Member shall be a party to a contract with WMATA during the Board Member's term of service. For purposes of this section, a Business will be considered "substantially" owned or controlled if the Board Member or a Household Member singly or in combination owns or controls more than fifty percent (50%) of the Business (i.e., by value or voting power).

2. A Board Member shall not Participate in a decision by the Board or WMATA management to hire, appoint, employ or promote, or to enter into a Financial Transaction with a Relative of the Board Member.

C. Post WMATA Service Restrictions

1. Board Members shall not, for a period of two years following the end of their term or effective date of their resignation, accept employment with any private third party to work on a matter in which the Board Member has Participated.

2. In addition, a Board Member, his or her Household Members or any Business that is wholly or substantially owned or controlled by that Board Member or his or her Household Member, shall not be a party to a contract with WMATA for two years following the conclusion of the Board Member's term of service.

3. For purposes of this section, a Business is "substantially" owned or controlled if the Board Member or Household Member singly or in combination owns or controls more than fifty percent (50%) of the Business (i.e., by value or voting power).

Article X: Disclosures and Acknowledgements

A. Within thirty (30) days of assuming a position as a Board Member and annually on or before April 30 thereafter, each Board Member shall submit a disclosure statement to the Board Secretary ("Disclosure Statement"), using a form provided by WMATA.

B. Continuing Disclosure Obligation. Whenever there is a change to the information reported in a Board Member’s Disclosure Statement, the Board Member shall notify the Board Secretary, in writing, within ten (10) calendar days of the change and its details, using a form provided by WMATA. Such statement shall be maintained with the Board Member's most recent Disclosure Statement.

C. Disclosure of Gifts. Board Members shall disclose to the Board Secretary any Gift solicited or accepted from a Prohibited Source by the Board Member or a Household Member pursuant to an applicable exception of this Code. Gifts shall be disclosed in writing at the time of solicitation or acceptance (or as soon as possible thereafter). The disclosure shall briefly describe the Gift, state its value and identify its source. Gift disclosures shall be maintained by the Board Secretary for compilation and filing with each Board Member's annual Disclosure Statement.

D. Disclosures will be submitted to the Board Secretary. The Board Secretary will review each disclosure for completeness and request the Board Member to provide any incomplete information. The Board Secretary will provide each completed disclosure to the Ethics Officer for review.

E. Acknowledgement of Fiduciary Duties and Responsibilities. Immediately upon being sworn in as a Board Member, and annually in the Disclosure Statement thereafter, each Board Member shall acknowledge the Board Member's understanding of his or her fiduciary obligations to the WMATA to the Board Secretary.

F. Acknowledgement of Ethics Obligations. The Ethics Officer will provide Board Members with a copy of this Code upon assuming their position as Board Member. Within thirty (30) days of receiving the Code, Board Members shall provide the Ethics Officer with a written acknowledgement that they have read and will comply with the Code.

G. All statements required by this section shall be available for public review in the office of the Board Secretary.

Article XI: Other Reports of Conflicts of Interest and Suspected Ethics Violations

A. Board Members shall disclose to the Ethics Officer any Conflicts of Interest and any suspected violations of this Code.

B. Any person may report suspected violations of this Code or Conflicts of Interest. Such reports: (1) must be made in writing, (2) must involve a Board Member’s conduct in the Board Member’s capacity as a Board Member of the WMATA Board, and (3) should be materially related to a violation of this Code, law, rule, regulation or duty, as opposed to a complaint about a policy or a matter of judgment. The report shall be submitted to the Ethics Officer and may be made anonymously.

Article XII: Ethics Officer

A. The Ethics Committee shall designate in public session a WMATA employee to serve as the Board’s Ethics Officer, who shall continue in that position until the designation is rescinded by the Ethics Committee.

B. The Ethics Officer is charged with fostering the highest ethical standards for WMATA Board Members, thereby strengthening public confidence that the business of WMATA is conducted with impartiality and integrity. Specifically, the Ethics Officer is responsible for:

1. distributing copies of this Code to Board Members;

2. reviewing disclosures submitted by Board Members;

3. receiving allegations of violations of this Code, and advising the Ethics Committee regarding further action;

4. advising Board Members, the Ethics Committee and Board about the application of this Code to specific questions or situations presented by Board Members, and providing written opinions on the resolution of Conflicts of Interest; and

5. arranging for the preparation and delivery of ethics training materials and sessions; and

6. serving as primary support staff to the Board's Ethics Committee (see Article XIII).

C. Ethics Opinions

1. Board Members may request a written opinion from the Ethics Officer regarding the application of this Code to specific questions or situations that they encounter. Any Board Member may request an opinion regarding the application of this Code to specific questions or situations regarding other Board Members. Requests for written opinions will include a full and accurate disclosure of all material facts.

2. No Board Member shall be found to have violated this Code if the alleged violation followed from good faith reliance on a written opinion from the Ethics Officer that was made after a full and accurate disclosure by the Board Member of all material facts.

D. Role of General Counsel

The Ethics Officer shall consult with WMATA's General Counsel, as necessary, in connection with carrying out the above-described duties.

Article XIII: Ethics Committee

A. Formation

1. The Executive Committee will serve as the Ethics Committee. The Board Chair will serve as the Chair of the Ethics Committee, or in his or her discretion, designate another member of the Ethics Committee to serve as Chair. In matters involving the Board Chair, the First Vice Chair will perform these duties. An Ethics Committee member who is unable to fulfill his or

her duties on the Committee due to a Conflict of Interest ("**Conflicted Member**") may not designate his or her own replacement; instead the Conflicted Member will so inform the Chair of the Ethics Committee, who will select a replacement. The Chair, after consulting with the other Board Members from the Jurisdiction of the Conflicted Member and other members of the Ethics Committee, will select a replacement representing the same Jurisdiction as the Conflicted Member, provided there is a member from that Jurisdiction who can fulfill the responsibilities of a member of the Ethics Committee (e.g., does not have a conflict).

2. When considering suspected violations, any Ethics Committee consisting of an even number of members will add one additional member. The additional member will be chosen on a rotating basis established randomly by the Ethics Officer. The additional member must be a non-conflicted Board Member.

B. Quorum and Meetings

Four members of the Ethics Committee, consisting of at least one member representing each Signatory, constitute a quorum. The Ethics Committee will meet in and follow the procedures for Executive Sessions, except that attendance is limited to the members of the Ethics Committee, the Ethics Officer, WMATA's General Counsel, and persons the Ethics Committee deems necessary for the discussion.

C. Consideration of Suspected Violations by the Ethics Committee

1. The Chair of the Ethics Committee will promptly schedule an executive session to consider reports of suspected violations of the Code or Conflicts of Interest, and notify the Ethics Officer and WMATA's General Counsel. The Board Member whose alleged conduct is the subject of Ethics Committee consideration will be given notice and an opportunity to be heard in writing and in person, either directly or through a representative.

2. If the matter can be resolved promptly, such as by finding that the allegation has no merit, or by requiring the affected Board Member to file an updated Disclosure Statement or to recuse himself/herself from any matter in which he/she has a Conflict of Interest, the Chair of the Ethics Committee will inform the affected Board Member of the necessary action (e.g., recusal, declaration, disclosure) that must be completed within five (5) business days. The Ethics Committee's determination will be maintained by the Board Secretary and be made publicly available.

3. Unless the matter can be promptly resolved as described in the immediately preceding paragraph, then the Ethics Committee will refer the matter to WMATA's Inspector General who will promptly conduct an investigation, unless the Inspector General declines to investigate for reasons of Inspector General independence or conflicts. If the Inspector General declines to investigate, the Ethics Committee will retain outside counsel to conduct the investigation.

4. At the conclusion of the investigation, the Inspector General, or the outside counsel, will brief the Ethics Committee and then promptly provide the Board with a written public summary report of the findings of fact. If the investigation is conducted by the Inspector General, the investigation, briefing and written public summary report will be done in a manner consistent

with the Inspector General's established investigative policies and procedures. Nothing in this paragraph restricts the Inspector General's authority to conduct any other or additional investigation, audit or evaluation relating to any WMATA activities, including activities relating to the matter referred to the Inspector General under this paragraph.

D. Board Action Upon Written Public Summary Report

1. The Board will consider in public session the Inspector General's, or the outside counsel's, written public summary report of findings of fact. The Ethics Officer will attend the session to provide guidance. The Board may request further investigation by the Inspector General or outside counsel.

2. The Board will make a written determination in the form of a Board resolution of whether a violation has occurred, and if so, the appropriate sanction. The standard for finding an ethics violation is whether the evidence shows that it is more likely than not that the affected Board Member violated this Code. The affected Board Member and any other conflicted Board Member may not Participate in the Board's consideration of the determination. The determination will be maintained by the Board Secretary and be made publicly available.

E. Sanctions

1. If the Board determines that a Board Member has knowingly violated this Code or a related applicable law, the Board shall confer with the Board Member's appointing authority to consider what action they determine to be appropriate, which may include but is not limited to: issuing a public reprimand; directing involuntary recusal; removal from positions held on Committees; giving written notice of the violation to the Board Member's appointing authority; submitting a request to the Board Member's appointing authority that the Board Member be removed; any other appropriate action regarding the Board Member; and appropriate action regarding any contract or agreement that is related to the violation (e.g. voiding or canceling a contract), to the extent permitted by law.

2. Any Board Member who willfully violates any provision of Compact § 10, "Conflict of Interest," shall, as specifically set forth in § 10(b) and at the discretion of the Board, forfeit the Board Member's position with WMATA. The Board shall confer with the Board Member's appointing authority when exercising its discretion in this part, and a Board Member may be removed or suspended from office only as provided by the law of the Board Member's Jurisdiction. The Board shall provide the Board Member notice and an opportunity to be heard, in writing and in person, directly or through a representative, before taking official action to cause the Board Member to forfeit the position.

3. Any Financial Transaction to which WMATA is a party made in contravention of Compact § 10 may be declared void by the Board. The Board shall provide notice and an opportunity to be heard, in writing and in person, directly or through a representative, to any Business whose Financial Transaction with the Board or WMATA is considered to contravene these sections before taking action to void the transaction.

4. The Board may seek guidance from the Ethics Officer or legal advice from WMATA's General Counsel regarding appropriate sanctions.

Article XIV: Interpretation and Training

A. The Board is responsible for enforcing this Code. It may seek general guidance regarding interpretation of the Code from the Ethics Officer.

B. The Ethics Officer will arrange for all Board Members to receive in-person ethics training and accompanying training materials within four weeks of the start of their term and thereafter on an annual basis.

Article XV: Severability

The provisions of this Code shall be severable and if any phrase, clause, sentence or provision is declared invalid, the validity of the remainder shall not be affected thereby.

Article XVI: Effective Date; Duration; Amendment

This Code shall become effective when adopted by the Board and shall remain in effect unless and until amended or revoked by the Board in accordance with § 8 of the Compact. The Board may review and amend this Code in consultation with the Ethics Officer and WMATA's General Counsel.

APPENDIX 1
TO CODE OF ETHICS FOR MEMBERS OF THE WMATA BOARD OF DIRECTORS

EXCEPTIONS TO RULE AGAINST ACCEPTING GIFTS

1. Gifts of $25 or Less. Board Members and Household Members may accept a Gift, other than cash, of $25 or less, so long as the aggregate market value of individual Gifts a Board Member or Household Member receives from the same Prohibited Source in a calendar year does not exceed $50. If the market value of a Gift exceeds $25 (or the aggregate market value of multiple gifts exceeds $50), a Member may not pay the excess value over $25 (or $50) in order to accept the gift.

2. Personal Gifts. Board Members and Household Members may accept a Gift that is given under circumstances that make it clear that the Gift is motivated by a personal friendship or family relationship rather than the position of the Board Member. Relevant factors in deciding whether a Gift is motivated by a personal friendship or family relationship include the history of the friendship or relationship, and whether the cost of the gift is paid by the individual with whom the friendship or relationship exists or by the individual's employer.

3. Widely Attended Gatherings. Board Members and Household Members may accept a gift of free attendance at a widely attended gathering or any portion of such an event that is open or part of a regularly-scheduled program. A gathering is not widely attended, open or part of the regularly-scheduled program if it is, for example, by invitation only or focused on a particular business rather than transit more generally.

   Free attendance to a widely attended gathering may include the provision of food, refreshments, entertainment, instruction and instructional materials, each of which is furnished to all attendees as an integral part of the gathering. Free attendance may not include the provision of travel or lodging.

4. Speaking Engagements and Events. Board Members and Household Members may accept free attendance from the sponsor of an event at which they are speaking, presenting information or otherwise participating on behalf of WMATA. Free attendance may include food, refreshments and entertainment furnished to all attendees as an integral part of the event. Free attendance may not include the provision of travel or lodging. Participation in the event on the day of the Board Member's or Household Member's participation is viewed as a customary and necessary part of the performance of their positions and does not constitute a Gift.

5. WMATA-Sponsored Events. Board Members and Household Members may accept free attendance to an event that is sponsored solely by WMATA to recognize one or more Authority officers or employees or a WMATA achievement or milestone, or that is sponsored, in whole or in part, by WMATA to raise funds for a charitable organization or cause. Free attendance to such an event may include the provision of food, refreshments and entertainment.

6. Gifts to Household Members. Household Members may accept a Gift that results from the business or employment activities of the recipient, and it is clear from the circumstances that the gift is not being offered or given because of the Board Member's position with WMATA.

7. Prizes. Board Members may accept a gift that is a prize given to successful competitors in competitive contests or events or to persons based upon random drawings (including door prizes given randomly). Board Members may accept a gift, not addressed in the prior sentence, that is provided as a favor or in recognition of attendance to all attendees at a widely attended gathering or at an event identified in paragraph (4) or (5), so long as the value of the gift is less than $25.

8. Gifts to WMATA. A Member representing or acting on behalf of WMATA may accept and use gifts of property for WMATA. Property accepted under this section and proceeds from that property must be used, as nearly as possible, under the terms of the gift, if any. These include: (a) ceremonial gifts given to Board Members (e.g., by representatives of governmental units) while serving as a representative of WMATA that are accepted on behalf of WMATA; and (b) gifts of food or refreshments provided Board Members at events they are attending as representatives of WMATA, where it is clearly in the interest of WMATA that it be present at the event through one or more official representatives. In the case of ceremonial gifts, Board Members are to turn the gifts over as soon as practicable to the Ethics Officer for disposition.

9. Approved Gifts. The Ethics Committee may, in an open public meeting, approve a Board Member's acceptance of a gift not otherwise falling within one of the foregoing exceptions if it determines that the acceptance would not be detrimental to the impartial conduct of the business of WMATA.

Appendix 4

September 10, 2019

CONFIDENTIAL

Geoffrey A. Cherrington, Inspector General
Washington Metropolitan Area Transit Authority
600 Fifth St., NW
Washington, DC 20001

Dear Mr. Cherrington:

The Code of Ethics for Members of the WMATA Board of Directors provides that when considering alleged violations of the Code, the Ethics Committee may refer specific issues for investigative assistance. The Ethics Committee is considering allegations of Code violations by Board members regarding their conduct during the prior Ethics Committee's consideration of allegations against Jack Evans ("Evans Matter"). These new allegations do not relate to the substance of the former allegations against Jack Evans, the prior Ethics Committee's consideration of those allegations, or any analysis of those allegations such as the outside counsel's report.

Please conduct sufficient fact finding to address each of the following numbered issues, to assist the Committee's review of the following allegations concerning the conduct of then Board members Jack Evans and Corbett Price and of Board member David Horner during the Evans Matter.

Allegation 1: The efforts by one or more of Messrs. Evans, Price and Horner to keep confidential from other Board members the finding that Mr. Evans violated the Code of Ethics.

1.1 Describe if information regarding the finding was not made available to other Board members upon their request.

1.2 If any of the above Board members sought to keep the investigation results confidential, provide the facts necessary for the Ethics Committee to determine whether he did so in a manner that violated the Code of Ethics, or (if applicable) in a manner inconsistent with his duties as a member of the Ethics Committee.

Allegation 2: The interactions of Mr. Evans and Mr. Price with WMATA staff to possibly influence the handling of the results of the investigation regarding whether Mr. Evans violated the Code of Ethics.

2.1 If Jack Evans interacted with WMATA staff to influence the handling of the results of the investigation, provide the facts necessary for the Ethics Committee to determine whether he did so in a manner that violated the Code of Ethics.

Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and
Yellow Lines

A District of Columbia
Maryland and Virginia
Transit Partnership

2.2 If Corbett Price interacted with WMATA staff to influence the handling of the results of the investigation, provide the facts necessary for the Ethics Committee to determine whether he did so in a manner inconsistent with his duties as a member of the Ethics Committee, or in a manner that violated the Code of Ethics.

Please prepare to give a verbal report to the Ethics Committee at the conclusion of your investigation. Contact me when you are ready to deliver this report. I will arrange for the Committee to be present during your report. The Committee will invite Messrs. Evans, Price and Horner to attend your verbal report.

The Ethics Committee will provide Messrs. Evans, Price and Horner an opportunity to be heard, in writing or in person, directly or through a representative. Hence, this opportunity will be in addition to however you determine to gather their testimony and evidence during your investigation. Please be prepared to respond to testimony and evidence presented by Messrs. Evans, Price and Horner during their opportunity to be heard.

Following your verbal report and the opportunity to be heard, the Committee will determine whether the facts support a Code violation. The Committee may ask you to prepare a written summary report of your factual findings, which will be made available to the public.

Sincerely,

Paul C Smedberg

Paul C. Smedberg
Chair, Ethics Committee

cc: Ethics Committee Members
Jack Evans
David B. Horner
Corbett A. Price
Phillip Staub, Board Ethics Officer

December 8, 2022

Dear Chair Smedberg and Members of the Board of Directors:

On September 10, 2019, the Washington Metropolitan Area Transit Authority, Office of Inspector General (OIG) received a letter from Board Chairman Paul C. Smedberg, in his capacity as Chairman of the Board's Ethics Committee (the Committee), regarding the Committee's investigation into alleged violations of the Board's Code of Ethics by certain Board members.

In his letter, Chairman Smedberg requested that OIG conduct sufficient fact finding to address each of the allegations listed below, in order to assist the Committee's review of allegations that certain then or former Board members – namely, Jack Evans, Corbett Price, and David Horner – violated the Code of Ethics by their conduct during the prior Committee consideration of previous allegations against Jack Evans.

The factual findings provided below are solely those of OIG based on the results of OIG's investigation and in no way represent conclusions of any other agency that investigated this, or any other matter associated with Jack Evans. It should also be noted that Corbett Price, former WMATA Board member, did not agree to be interviewed as part of the investigation.

Allegation 1**: The efforts by one or more of Messrs. Evans, Price, and Horner to keep confidential from other Board members the finding that Mr. Evans violated the Code of Ethics.**

1. ***Describe if information regarding the finding was not made available to other Board members upon their request.***

   This review found no evidence that the findings of the Committee were not made available to the full Board. However, Evans stated in several instances that he wanted the findings contained to the Committee and not released publicly. Price too made several statements and communicated with WMATA staff in support of Evans' desire to keep the findings of the investigation within the Committee. Although Horner sided with Evans and Price on process issues, this review found no evidence that Horner made any overt efforts to keep the Committee's findings from other Board members.

Washington Metropolitan Area Transit Authority

Office of Inspector General
500 L'Enfant Plaza, SW
Suite 800
Washington, DC 20024
202-962-2400

2. ***If any of the above Board members sought to keep the investigation results confidential, provide the facts necessary for the Ethics Committee to determine whether he did so in a manner that violated the Code of Ethics, or (if applicable) in a manner inconsistent with his duties as a member of the Ethics Committee.***

Jack Evans

Throughout the Committee's inquiry and subsequent public statements concerning the Committee's finding that Evans violated the Board's Code of Ethics, Evans attempted to explain his misconduct to Committee members in an effort to minimize the seriousness of it. These actions were within the proper scope of his defense to the allegations. The Committee retained the law firm of Schulte, Roth, & Zabel (SRZ) to conduct the investigation and make public the findings at the conclusion of the investigation. According to Board members and WMATA personnel involved in this matter, Evans repeatedly questioned the legitimacy of the inquiry, asserting that the inquiry should have been handled "in-house," that the SRZ report should not be provided to the full Board, and that the Committee's findings should not be made public. According to a witness, Evans and his attorney contacted the witness repeatedly after the SRZ report was issued and complained about the process.

Following the Committee's findings that he violated the Board's Code of Ethics, Evans stated in a Board meeting that he was stepping down as Chairman so another jurisdiction could Chair the Board. Evans was supposed to announce he was resigning as Chairman because of the results of the investigation, according to an understanding reached between him and the Board. His statement about why he was resigning was misleading, false, and was contrary to his understanding with the Board. The Board and Clarence Crawford, former Ethics Committee Chair, subsequently issued a public statement clarifying that Evans had violated the Board's Code of Ethics. Following a May 7, 2019 Board meeting, Evans sought to have WMATA issue a statement announcing that the investigation had concluded but without any statement that the Board had found a violation.

Corbett Price

Multiple requests were made to interview former Board member Corbett Price. OIG did not receive any response to our requests. Price resigned from his position on the Board on August 30, 2019. Price supported the finding that Evans committed an ethics violation. However, according to witnesses interviewed, Price was aligned with and supportive of Evans throughout the Committee's inquiry. Price disagreed with the investigative process and how the findings of the Committee were recorded and reported to the full Board. At one point during the May 7, 2019 Board meeting, Price referred to the ethics inquiry as a "kangaroo court."

This review found no evidence that Price made threats of any kind against WMATA personnel involved in this matter. However, throughout the Committee's inquiry, Price, a member of the Committee, repeatedly questioned the process and the need for a formal investigation by an outside entity. He also opposed making the Committee's findings public. According to a witness, even though Price agreed with the other Committee members that Schulte Roth should brief the full Board on their findings, he contacted the witness after the SRZ report was completed and asked why the report needed to be provided to the full Board or why the Board needed to be briefed on the findings.

David Horner

The OIG review found no evidence of misconduct on the part of former Board member David Horner. Horner resigned from his position on the Board on January 12, 2021. Horner (a member of the Committee) took issue with the way in which the Committee proceeded with the investigation and specifically a lack of due process. However, he made no overt effort to impede the investigation or keep the investigative findings from the full Board.

***Allegation 2*: The interactions of Mr. Evans and Mr. Price with WMATA staff to possibly influence the handling of the results of the investigation regarding whether Mr. Evans violated the Code of Ethics.**

1. ***If Jack Evans interacted with WMATA staff to influence the handling of the results of the investigation, provide the facts necessary for the Ethics Committee to determine whether he did so in a manner that violated the Code of Ethics.***

Following the Committee's findings that he violated the Board's Code of Ethics, Evans provided false and misleading statements to the public and the press by stating there was no finding that he violated the Code. Furthermore, he falsely stated that he was stepping down from the Board Chairmanship due to a normal rotation of this position. Clarence Crawford, former Board member and Ethics Committee Chair, and the Board subsequently issued a public statement clarifying that Evans had violated the Board's Code of Ethics.

According to a witness, on May 7, 2019, Evans contacted the witness several times complaining about a Board Executive Committee meeting being scheduled without his knowledge and a pending statement by the Board concerning his ethics violation. The witness stated, "Evans felt that everything was [another witness's] fault," Evans stated something similar to, "I know this is [the other witness's] doing, and I'm going to make [that witness] pay." Furthermore, Evans stated to the former witness something to the effect that, "If you're not careful, you'll be next. I hope you're not involved, but it seems like you are." That witness took Evans' statements to mean he would fire or get rid of that witness and took Evans' words as "harassing, threatening, and rude."

That witness subsequently told another witness that Evans had threatened their jobs with WMATA. Evans did not threaten that other witness directly. As for the former witness, on May 13, 2019, Crawford discussed those threats with Evans, during which Evans appeared to acknowledge his statements to the former witness and was apologetic. Evans then apologized to the other witness, who was present at the meeting. Crawford also told Evans he needed to apologize to the former witness, who confirmed that he did.

2. ***If Corbett Price interacted with WMATA staff to influence the handling of the results of the investigation, provide the facts necessary for the Ethics Committee to determine whether he did so in a manner inconsistent with his duties as a member of the Ethics Committee, or in a manner that violated the Code of Ethics.***

According a witness, Price made comments to the witness regarding the investigation. The witness was uncertain how seriously to take the interaction with Price. The witness recalled that during deliberation at WMATA headquarters, the witness and Price were in the restroom when Price commented that the Evans matter was "stupid", and Price wished that the witness would have made the matter go away. Furthermore, according to the witness, Price wished that no outside counsel had been hired and opined that if the witness had conducted the investigation it would have been easier for the Ethics Committee to resolve the matter in Evans' favor. Since Price did not agree to an interview, OIG could not offer further insight as to why he made these statements or what he meant by them.

Should you have any questions regarding OIG's response, please feel free to contact me at (202) 962-1691 or RFebles@wmataoig.gov.

Sincerely,

[redacted]

Rene Febles
Inspector General