



Board of Trustees
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February 8, 2018

REVISED

The University of Maine

University of Maine
at Augusta

University of Maine
at Farmington

University of Maine
at Fort Kent

University of Maine
at Machias

University of Maine
at Presque isle

University of
Southern Maine

TO: Members of the Audit Committee

FR: Ellen N. Doughty, Interim Clerk of the Board

RE: **February 9, 2018 Audit Committee**

The Audit Committee will meet from **10:00 am to 12:00 pm on February 9, 2018**. The meeting will be held at the University Maine System Executive Offices, Rudman Conference Room, 253 Estabrooke Hall, 15 Estabrooke Drive in Orono. In addition to the meeting location at Estabrooke Hall, the following Polycom sites and conference call connection will also be available:

- UMFK – Alumni Conference Room, Nadeau Hall
- USM – 703 Law Building, Portland
- UMA – 111 Robinson Hall
- Conference call – 1-800-605-5167 code 743544# (public meeting)

The meeting materials will be posted to the Diligent Board Portal as well as the Board of Trustees website at: (<http://www.maine.edu/about-the-system/board-of-trustees/meeting-agendas/audit-committee/>).

If you have questions about the meeting materials please call me at 581-5840. If you have any questions or desire additional information about the agenda items, please call Tracy Elliott at 581-5492.

Encl.

- cc: James Page, Chancellor
- Trustees who are not members of the Audit Committees
- Presidents
- Ryan Low
- Tracy Elliott
- Darla Reynolds
- Chip Gavin

Board of Trustees

REVISED
2/8/18

Audit Committee Meeting

February 9, 2018
10:00 am to 12:00 pm

University of Maine System
Rudman Conference Room
253 Estabrooke Hall, 15 Estabrooke Drive, Orono

AGENDA

Call to Order in Public Session

Motion for Executive Session pursuant to 1 MRSA Section 405(6) (A), (C) and (E)

Executive Session – public will be excused

- TAB 1 [Enterprise Risk Management Oversight Discussion](#)
- TAB 2 [Privileged Update on Sexual Harassment Complaints and Litigation](#)
- TAB 3 [Privileged Review of UMaine Energy Services RFP Process](#)

The Committee reserves the right to reconvene public session at the conclusion of executive session to consider making a statement, providing a public update of its executive session review, or taking public action. Members of the public and media who wish to attend public session may wish to remain on site during the executive session.

[Action items within the Committee purview are noted in green.](#)

[Items for Committee decisions and recommendations are noted in red.](#)

Note: An item may be brought up earlier or the order of items changed for effective deliberation of matters before the Committee.



AGENDA ITEM SUMMARY

- 1. **NAME OF ITEM:** Enterprise Risk Management Oversight Discussion
- 2. **INITIATED BY:** M. Michelle Hood, Chair
- 3. **BOARD INFORMATION:** X **BOARD ACTION:**
- 4. **OUTCOME:** **BOARD POLICY:**
Enhance fiscal positioning
- 5. **BACKGROUND:**

The Task Force on Risk Oversight and Board Governance was established in July 2017 by Board Chair James Erwin to review the System’s current practice and recognized best national practices with respect to risk oversight, board development and board governance, and to report to the Board no later than the November 2017 Board meeting its findings and recommendations with respect to any changes it recommends to current practice concerning these Board responsibilities. A copy of the Task Force’s final report is attached.

The Task Force agreed that the UMS Risk Assessment Overview matrix that was developed in 2010 is very comprehensive and could be considered by the Audit Committee as one possible format for regular reporting, subject to System resources and expertise. The matrix is also included in the meeting materials.

The definition of enterprise risk management was defined as the process of planning, organizing, leading, and controlling the activities of the university in order to minimize the effects of risk. Enterprise risk management expands the process to include not just risks associated with accidental losses, but also legal, financial, strategic, operational, and other risks.

The Audit Committee’s duties and responsibilities currently has the following statement:
Oversee the System efforts for enterprise risk management, to include the identification, assessment and prioritization of risks, as well as the development of action plans to address risks and progress towards mitigation.

The Task Force agreed that enterprise risk management should remain as a standing item for the Audit Committee.

At the February 9, 2018 meeting, the Audit Committee will discuss in Executive Session with System General Counsel:

- (i) which risks should be tracked for oversight purposes,
- (ii) the materiality threshold for Audit Committee consideration by type of risk; and
- (iii) the frequency of reporting to the Committee.

2/5/2018

University of Maine System
Board of Trustees

Task Force on Risk Oversight and Board Governance

Summary Report

November 9, 2017

The Task Force on Risk Oversight and Board Governance was established in July 2017 by Board Chair James Erwin to review the System's current practice and recognized best national practices with respect to risk oversight, board development and board governance, and to report to the Board no later than the November 2017 Board meeting its findings and recommendations with respect to any changes it recommends to current practice concerning these Board responsibilities.

The Task Force was requested to answer the following questions, and provide recommendations addressing any needed changes in Board practice:

- Does the UMS Board have proper insight into and oversight of enterprise and legal risk? Other than legal, over what other forms of risk should the Board exercise direct oversight?
- What if any changes should be made to Board committee structure and/or responsibilities to accomplish this oversight?
 - Are elements of enterprise and legal risk already adequately overseen by existing Board committees?
 - Does the Board, through its Committees or otherwise, have sufficient interaction with and reporting from relevant System staff to have necessary information available to properly oversee enterprise and legal risk? If not, what additional reporting requirements or interactions(s) should there be?
 - Could the duties of the Audit Committee be expanded to fill any gaps, including legal, reputational, and other forms of risk?
- What if anything should be done to improve Board member development, Board member engagement, and overall attention to issues of governance?
 - Should the Board reinstate a Trustee Affairs or Governance Committee to provide this focus?
 - Alternatively, could our governance objectives be met in some other way, such as through expanding the scope of the Audit Committee, assigning these responsibilities to the Executive Committee, or some other alternative?

Trustees Hood, Gardiner and Collins were members of the Task Force. Trustee Collins replaced Trustee Sutton following her resignation from the Board. The Task Force was primarily supported by University System General Counsel and the Clerk of the Board. The Task Force held four meetings via conference call. Background materials on Enterprise Risk, Board Governance and Board Obligations were provided to the group using the Diligent Board Portal.

On August 4th the group had a brief discussion on legal oversight and Board Governance regarding Board meeting structure and Board obligations, COS/General Counsel Thelen and

Interim Clerk Doughty providing information about historical Board and System practices in these areas.

At the August 25th meeting the group was joined by Chip Gavin, Chief General Services Officer, and Adam Green, Director of Risk Management. Adam Green discussed the four areas of focus relating to risk which are collaboration, insurance, consultation services and claims resolution. Chip Gavin provided overall context of the Risk Management's office collaboration with other System functions/offices and campuses. Following the meeting a UMS Risk Overview Matrix last updated in 2010 was distributed for consideration.

During the October 18th meeting the Task Force agreed the matrix that was developed in 2010 is very comprehensive and could be considered by the Audit Committee as one possible format for regular reporting, subject to System resources and expertise. The group discussed the definition of enterprise risk management as the process of planning, organizing, leading, and controlling the activities of the university in order to minimize the effects of risk. Enterprise risk management expands the process to include not just risks associated with accidental losses, but also legal, financial, strategic, operational, and other risks.

The Audit Committee's duties and responsibilities currently has the following statement:

Oversee the System efforts for enterprise risk management, to include the identification, assessment and prioritization of risks, as well as the development of action plans to address risks and progress towards mitigation.

The Task Force agreed that enterprise risk management should remain as a standing item for the Audit Committee, with that Committee giving further consideration to (i) which risks should be tracked for oversight purposes, (ii) the materiality threshold for Audit Committee consideration by type of risk; and (iii) the frequency of reporting to the Committee.

The Task Force met on October 31st to discuss Board development, engagement and overall governance issues. The Task Force discussed the historic role of the Trustee Affairs Committee related to Board governance, Board development and changes to Board policies. The group wanted to be sensitive to the time commitment for the Trustees and felt it was not effective to recommend a new standing Committee to review the issues previously handled by the Trustee Affairs Committee. The Task Force agreed the most appropriate mechanism would be to appoint an Ad Hoc Committee to review these items.

RECOMMENDATIONS:

- The Task Force recommends the Audit Committee oversee the Enterprise Risk Management function as a part of the Committee's standing responsibilities. It is suggested that staff develop a modernized mechanism/matrix/dashboard to track risk to provide to the Audit Committee on a defined timeline with a high level annual report to the full Board. The Task Force suggests a materiality threshold be developed to differentiate the risk reporting levels for management, the Audit Committee and the Board. As the need arises, the Board should be briefed on any substantial enterprise risk management issues on a case-by-case basis.
- The Task Force recommends the Chair of the Audit Committee work with System staff to develop the frequency and process for the Enterprise Risk Management for inclusion in the Audit Committee meeting structure.

- The Task Force recommends Board Committees review their duties and responsibilities (charters) to ensure they are being fulfilled.
- The Task Force recommends appointment of an Ad Hoc Committee to review Board development, engagement, oversight and governance. It is suggested that this Ad Hoc Committee have a defined role and timeline to report back to the Board.
- The Task Force recommends an annual Board meeting agenda item for a strategic discussion on Board effectiveness, evaluation of the Board meeting and agenda structure and if the Board has the appropriate level of oversight. As part of this dialog, the Committee Chairs should be consulted on challenges facing their committees. The Task Force feels it would be beneficial to have input from the Faculty and Student Representatives for this discussion.



AGENDA ITEM SUMMARY

1. **NAME OF ITEM:** Privileged Update on Sexual Harassment and Assault Claims and Litigation
2. **INITIATED BY:** M. Michelle Hood, Chair
3. **BOARD INFORMATION:** X **BOARD ACTION:**
4. **OUTCOME:** **BOARD POLICY:** 402
 Student Success
 Enhance fiscal positioning
5. **BACKGROUND:**

University of Maine System Chief of Staff and General Counsel James Thelen will update the Audit Committee in Executive Session on pending sexual harassment and assault complaints and litigation and review culture and environmental factors associated with such claims to ensure the System and its universities have the proper policies and support structures in place to enforce Board Policy 402 and protect all university community members.

AGENDA ITEM SUMMARY

1. **NAME OF ITEM:** Findings Regarding Review of UMaine Energy Services RFP Process
2. **INITIATED BY:** M. Michelle Hood, Chair
3. **BOARD INFORMATION:** **BOARD ACTION: X**
4. **OUTCOME:** **BOARD POLICY: 410**
Enhance fiscal positioning
5. **BACKGROUND:**

University of Maine System Chief of Staff and General Counsel James Thelen provided a privileged report to the Audit Committee in Executive Session of a confidential investigation conducted by the Office of General Counsel regarding reported claims of improper influence and/or conflicts of interest associated with University of Maine Energy Solutions RFP #2016-43.

Having considered General Counsel's report, as well as University of Maine System procurement and conflict of interest policies and the Committee's own chartered duties and responsibilities, it is recommended that the Committee adopt the following resolution and findings:

Resolution

Whereas, the University of Maine System Board of Trustees Audit Committee is charged with monitoring the adequacy and integrity of the University of Maine System's internal controls, financial reporting, compliance with legal and regulatory requirements and ethics reporting; and

Whereas the Audit Committee has the authority to direct or supervise an investigation into any matter within the scope of its duties and responsibilities, and, in connection with any such investigation, has the authority to utilize the System staff and other resources or to employ outside counsel or consultants at System expense; and

Whereas, a February 4, 2018 article in the Maine Sunday Telegram/Portland Press Herald PPH reported that a third party outside the University of Maine System made statements to other third parties suggesting that University of Maine employee Jake Ward may have provided assistance to a bidder responding to University of Maine RFP 43-16 in violation of University of Maine System policy; and

Whereas, a December 24, 2017 article in the Maine Sunday Telegram/Portland Press Herald noted that the James W. Sewall Company, of which UMS Chancellor James Page was CEO before becoming UMS Chancellor in March 2012, was one of several business entities involved in litigation over attempts to acquire the Old Town Mill for uses included in ConEdison

Solutions's project proposal submitted in response to University of Maine RFP 43-16; and

Whereas, UMS Board Chair James Erwin determined that the law firm at which he is a partner, Pierce Atwood, represents a business entity involved in the acquisition of the Old Town Mill; and

Whereas, UMS General Counsel James Thelen reported to the Committee that he investigated all facts available regarding the above-described matters, reviewed relevant System policies related to procurement and conflicts of interest, and provided legal advice regarding the same to the Committee in a properly-authorized executive session on this date,

Now, therefore, the UMS Board of Trustees Audit Committee finds and/or directs as follows:

1. That UMS General Counsel Thelen's investigation was appropriate in scope and independence and sufficient, under this Committee's supervision, to meet and discharge the Committee's responsibilities to investigate and monitor compliance with legal and regulatory requirements and UMS policy.
2. That the University of Maine's Vice President for Innovation and Economic Development, Jake Ward, had no role in developing University of Maine RFP 43-16 or the criteria by which responding bidders would be evaluated or scored. Based on this determination, the Committee accepts Vice President Ward's statement that he did not provide assistance to any bidder responding to University of Maine RFP 43-16. The Committee further finds that, based on all available evidence reviewed by General Counsel Thelen and independently reviewed by the Committee, University of Maine RFP 43-16 has to date been conducted in accordance with all applicable UMS policies.
3. That UMS Chancellor Page has no role or responsibility, and has had no involvement, in the University of Maine RFP 43-16 process to date, and it is determined that he has no present conflict under System policy relative to that RFP. However, should any contract proposal be brought forward for Board approval that includes work performed by the James W. Sewall Company, to avoid the appearance of conflict, the Chancellor should recuse himself from any direct or indirect participation in the approval process, and UMS General Counsel should take appropriate action to ensure the same.
4. That the Committee recognizes that UMS Board Chair Erwin, a member of this Committee, did not participate in the consideration of this matter or resolution given his law firm's representation of a business entity involved in the Old Town Mill acquisition. Because no contract is before this Committee or the Board at this time involving any benefit to the owners of the Old Town Mill, the Committee finds that no further action is necessary, but encourages Chair Erwin to review the matter further and advise the Board should these circumstances change.