

TO: ABA Board of Directors

FROM: ABA Governance Committee

April 29, 2003

GOVERNANCE COMMITTEE REPORT FOR FISCAL YEAR 2002

This letter provides a report from the ABA Governance Committee covering fiscal year 2002. The report has three sections:

1. Committee objectives and methodology
2. Committee findings
3. Resulting recommendations

In keeping with the decision made last year to streamline Governance Committee procedures in alternate years (unless issues of concern arise during the committee's interviews) this report provides somewhat less background than in prior years, and focuses more on the committee's findings and recommendations.

COMMITTEE OBJECTIVES AND METHODOLOGY

The Governance Committee is constituted based on the relevant section of Article VII.1 of the *ABA Bylaws*, which reads:

“The Board shall appoint a Governance Committee constituted of Bookstore Members, none of whom is a member of the Board, but one of whom is a previous Officer, to review annually the Association, Board, and Officers' practices in accordance with policies and procedures adopted by the Board. The Governance Committee's term is one year.”

The members of this year's committee are Chuck Robinson (Chair), Mary Gay Shipley, and Tom Campbell. The committee's function is described in substantial detail in the ABA's *Policy Manual*, but briefly it serves as an outside review body on the three issues summarized below where the Board and management may not have arm's length perspectives:

1. Ensuring that the relationship between the Board and senior management is functioning according to the ABA's organizational design as laid out in the Bylaws and the *Policy Manual* and that both bodies are otherwise observing their obligations as outlined in these documents
2. Supervising resolution of any issues where the Board or staff has a conflict of interest
3. Providing oversight if there is material question of whether the Board is maintaining fiduciary responsibility

It may be useful to note that it is **not** the committee's responsibility to evaluate the Board's decisions and strategic direction, or management's execution of the Board's directives.

As mentioned above, in keeping with the decision made last year to streamline alternate year committee proceedings, the committee's methodology was different this year than in the past. Specifically, the committee undertook the following:

1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with two current Board members and two staff members:
 - Ann Christophersen, President
 - Mitchell Kaplan, Vice President and Secretary
 - Avin Domnitz, Chief Executive Officer
 - Oren Teicher, Chief Operating Officer
2. Written questionnaires from four other representatives of the Board and staff:
 - Ellie Chang, Chief Financial Officer
 - Dan Cullen, Director of Communications
 - Suzanne Staubach, Board member
 - Lilla Weinberger, Board member
3. Discussions with the ABA's lead Auditor, Charlene Laniewski, KPMG
4. The financial Auditor's opinion letter for fiscal year 2002

A copy of the structured interview guide, along with a summary of the interview results, is attached as Appendix A.

COMMITTEE FINDINGS

Upon review of the above sources the committee found – similarly to last year - that the ABA's governance mechanisms appear to be working well. Indeed, due to the Board's thorough response to the committee's recommendations over the past two years, the governance mechanisms appear to be working even better than they were a year ago. The committee noted that in general, satisfaction with the current arrangements continued high among both the Board and staff, and that the few issues that arose appeared to be regarded as matters of modest concern.

In fact, several elements of ABA's larger governance scheme seem to have achieved new highs in effectiveness over the past year. Several respondents noted both the major contribution that the Bookseller's Advisory Council (BAC) has made in shaping the ABA's agenda, and the effectiveness of the Board in considering and reaching decisions.

With that said, the committee noted several areas where issues were raised. Each finding is described in more detail below.

1. There was strong support for finding ways to increase the directness of input from the BAC to the Board. Ideas raised included: 1) including the Board President and Vice

President as observers in BAC meetings as a matter of course; 2) having an additional Board member attend on a rotating basis; 3) scheduling meetings where possible so that the meeting summary can be forwarded to the Board prior to their deliberations on current topics; 4) having the BAC formally highlight key items at the end of each meeting to be presented to the Board

2. For the third year in a row, there continued to be some unease about the organization's effectiveness in thinking about the potential for unexpected changes in the long range strategic environment. Virtually everyone polled rated the two questions on this matter at or near their lowest score despite acknowledging that several important steps were taken over the past year to strengthen this capability
3. Several respondents raised issues about the process used to nominate and select candidates for ABA's Board over the past several years. Particular mention was made of the need to maintain representation of both particular technical skills and major membership categories (e.g., small, medium, and large stores)
4. Two respondents highlighted booksense.com as possibly of "great materiality" to ABA's financial health (although in prior years there has been discussion of the fact that unlike some material financial expenditures it is possible to ramp down booksense.com quickly if that decision seems prudent)
5. Finally, as the Governance Committee has carried out its charge this year, it has become apparent that some fine-tuning of the originally-planned mechanisms is in order if the "alternate years" idea continues. Specifically, it seems clear that in order to ensure continuity across years where only the chairperson participates in in-person interviews, that retaining the chair and committee members for an additional year is appropriate.

RESULTING RECOMMENDATIONS

Based on these findings, the committee would like to submit the following recommendations for Board discussion and review:

1. Consider adopting additional formal or informal approaches (beyond the current follow up memos) to broaden and make more timely the communications between BAC proceedings and the Board. Several specific ideas that were raised are noted above

The Board accepts this recommendation and is taking steps immediately to implement it. The President and the Vice-President of the Association as well as one other Board Member will be invited to each BAC meeting. At least once during the year the current Chairperson of the Nominating Committee will be asked to attend the BAC meeting to assist the committee in its evaluation of candidates to the Board. Also, whenever possible, a report of the BAC will be made prior to issues that could be informed by those proceeding being considered.

2. Have the Board undertake a long-term (e.g. 5-10 year) planning discussion that addresses the types of issues originally contemplated in the “Industry Scan” governance mechanisms and (consistent with recommendation 1) increase focus on any near term issues raised by the BAC. If the session is successful, formalize a periodic update mechanism that is integrated with the existing strategic planning process, and alter the relevant sections of the *Policy Manual* to reflect this change

Accepted. The Board is currently engaging in such a “long-Range” process. An evaluation of the process and its result will take place at its conclusion to determine whether the process should be institutionalized.

3. Consider recommending that the Nominating Committee apply formal screens to ensure that the Board maintain continuous representation of needed technical skills (e.g., finance) as well as continuous representation of various membership categories

Accepted. A full discussion of this process as well as an evaluation of the needs of the Board will take place annually.

4. Continue periodic review of booksense.com to ensure that both its benefits and financial impact is well understood by all Board members

Accepted. This is already accepted practice of the Board and will be continued.

5. Consider altering the process used by the Governance Committee as follows:
 - a. Appoint members to a two-year (rather than one-year) term
 - b. When a new chairperson is named in the second year of their term, extend their term by one year (for a total of three years) so that they overlap with the new chairperson in the next year
 - c. The committee recommends that this approach be undertaken next year on a trial basis, and if it proves to be successful, that any necessary changes be made to the *Policy Manual*.

Accepted.

* * *

In closing, the committee would like to note the cooperation of all involved as well as numerous comments that the ABA’s commitment to putting such a procedure in place is testimony to its continued commitment to transparency and good governance. Please feel free to contact any committee member if questions arise.

APPENDIX A

TO: Governance Committee interviewees

FROM: ABA Governance Committee

January 11, 2003

GOVERNANCE COMMITTEE QUESTIONNAIRE

Thank you for agreeing to respond to the attached brief questionnaire regarding ABA's governance during fiscal year 2002 (11/01-10/02).

ABA's Governance Committee is an outside body that annually assesses if any of three types of situations exist where the ABA's Board and management may not have arm's length perspectives. Its goal is to:

1. Ensure that the relationship between the Board and senior management is functioning according to the ABA's organizational design as laid out in the Bylaws and the *Policy Manual*
2. Supervise resolution of any issues where the Board or staff has a conflict of interest
3. Provide oversight if there is material question of whether the Board is maintaining fiduciary responsibility

It may be useful to note that it is **not** the committee's responsibility to evaluate the Board's decisions and strategic direction, or management's execution of the Board's directives.

We appreciate your willingness to promptly complete and return the enclosed questionnaire, and look forward to your response. Thank you again for agreeing to participate in this important process.

ABA GOVERNANCE COMMITTEE QUESTIONNAIRE – FY 2002

Please respond to the following questions regarding governance issues during ABA’s fiscal year 2002 (11/01-10/02) and return your completed questionnaire in the enclosed envelope. Many of the questions ask for a response on a 7 point scale where 7 is high. If you do not have an opinion, please enter “NA”. Feel free to add comments at the end of this questionnaire. Thank you in advance for your help.

Questions on the Board/Management Relationship and Obligations

As you know, the ABA’s Policy Manual outlines Governance Process Policies in section two. The following questions relate to those expectations.

1. On a seven point scale (7 is high), how well is the Board accomplishing the following? :
 - a. Initiating policy rather than reacting to staff initiatives? ___5.4___
 - b. Monitoring future trends? ___5.1___
 - c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes? ___5.9___
 - d. Maintaining internal discipline on matters such as attendance, preparation, and communications? ___5.6___
 - e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and *Policy Manual*? ___6.2___
 - f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost? ___5.9___
 - g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority? ___6.5___
 - h. Assuring that the performance of the Executive Director is consistent with the Board’s desires and expectations? ___6.3___
 - i. Revising as appropriate the ABA’s end policies and strategic plan within the last year? ___6.9___
 - j. Reviewing the Executive Director’s performance as outlined in the *Policy Manual* during the month of July? ___6.8___
 - k. Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point? ___6.9___
 - l. Using the chairperson as a two-way communication conduit with the Executive Director? ___6.2___

- m. Avoiding exercise of individual authority except when explicitly board-authorized? __6.9__
 - n. Directing only the CEO regarding operational achievement and conduct, rather than any other members of management? __7.0__
2. On a seven point scale (7 is high), how well is the CEO accomplishing the following? Feel free to add comments as well:
- a. Making available to the Board sufficient information and staff work to support their obligation to make strategy and policy? __6.1__
 - b. Working effectively with the Board as an interface between the Board and the ABA's staff? __6.6__
 - c. Working within the boundaries of any *executive limitations policies* (as defined in the *Policy Manual*) established by the Board? __6.8__

Questions on Conflict of Interest

The ABA's Policy Manual defines policies regarding Board conflicts of interest in section 2.VI and in section 5. The following questions reflect those policies.

- 1. Has there been any self-dealing or any conduct of private business or personal services between any Board member and the ABA except as procedurally controlled? (Y/N) __N__
- 2. Have Board members failed to absent themselves as appropriate if any unavoidable conflict of interest arises? (Y/N) __N__
- 3. Has any Board member used their position to obtain employment for themselves, family members, or close associates? (Y/N) __N__
- 4. Has any Board member failed to annually disclose their involvement with other organizations, with vendors, or any other associations that might produce a conflict of interest? (Y/N) __N__
- 5. If the answer to any of the above is yes, please provide details. __NA__

Questions on Fiduciary Responsibility

Fiduciary responsibility requires that Board members live up to high standards with regard to their responsibilities to the organization. Examples include avoiding conflicts of interest, applying due care, candor, and confidentiality as appropriate, and applying prudent business judgment, particularly to matters of great materiality. Because the other elements of fiduciary responsibility are covered in earlier questions, this section concentrates on the last of these obligations.

1. Is there any activity or matter that the Board has endorsed that is currently underway or is anticipated that is of great materiality – that is, could threaten the long-term success or existence of the ABA? ___2Y; 4N; 2NA___

2. If the answer to question one is yes, has the Board applied prudent business judgment and otherwise fulfilled their obligations to the membership as Directors under the Bylaws and Policies of the ABA? ___All Y___

A Question Regarding the Governance Committee

1. On a seven point scale (seven is high), how effective do you feel that the Governance Committee has been in its first two years of operation? __6.6__

2. Please note any suggestions that you feel would increase the committee’s effectiveness:

* * *

Thank you for your participation. If there are there any topics that you feel that we should have covered that we have not had a chance to speak about, or if you have further comments on any topics covered in the questionnaire, please attach an additional page.

Please provide your name and contact information. All individual responses will be kept confidential within the Governance Committee.

Your name: _____

Your phone number: _____

Your email address: _____

Finally, please return your completed questionnaire (an addressed envelope is enclosed) to:

Ivan Barkhorn
 Meridian Strategy Group, LLC
 1542 High Street
 Boulder, CO 80304

January 11, 2003