

POLICY MANUAL

Table of Contents

	<u>Section</u>
Bylaws	1
Governance Process Policies	2
Board/CEO Linkage	
Advisory Bodies	
Resolution Submitted by the Task Force on Advisory Bodies	
Mission, Goals, and Roles of Procedure for ABA Advisory Bodies	
Outline of Proposed Advisory Bodies	
Governance Review Committee	
Audit Committee Guidelines	
Executive Limitations Policies	3
Nomination and Election Guidelines	4
Statement of Board Policy	5
Conflict of Interest	
Confidentiality	
Non-Disclosure Agreement	
Attendance	
Board/Member Communication Policy	
The Fundamentals—Antitrust Statement	6
Board Expenses and Procedures	7
Personnel Policies and Procedure Manual	8
Record Retention Policy	9
Membership Categories and Dues.	10
Investment Policy Statement.	11
Policy on the Posting of Financial and Governance Documents	12

Bylaws of the American Booksellers Association 2000

A Not-For-Profit Corporation

ARTICLE I (NAME AND PURPOSE)

1. **Name.** The name of the Association is the American Booksellers Association, Inc. (“Association” or “ABA”), a not-for-profit corporation organized under the laws of the State of New York.
2. **Location.** The principal office shall be within the State of New York.
3. **Purpose.** The purposes of the Association are to act as a professional association as defined in Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, and include, but are not limited to, professional advancement, education, and advocacy on behalf of professional booksellers, such as the following:
 - (a) serving as the voice of professional independent booksellers and advocating on their behalf;
 - (b) providing professional independent booksellers with access to the information and services they require;
 - (c) providing opportunities for peer interaction; and
 - (d) promulgating policies and conducting activities for the betterment of all those individuals and firms involved in aspects of the professional independent bookselling industry.

ARTICLE II (MEMBERS)

1. **Classes of Members.** There shall be classes of members, including Bookstore Members, as set forth in Article II, Section 2. The Board of Directors may establish other classes of voting or non-voting members.
2. **Bookstore Members.** Any commercial establishment that is directly engaged in the retail sale of books shall be eligible to become a Bookstore Member. Bookstore Members shall have the right to vote in accordance with these Bylaws. Each Bookstore Member shall appoint one person as its representative to cast votes on its behalf at meetings of the Association and a person or persons to receive Association communications. Bookstore Members with more than one retail outlet shall have only one voting representative.
3. **Applications for Members.** All applicants to become members shall complete and sign the application form provided by the Association and submit the application to the principal office of the Association. Admission decisions shall be made in accordance with policies and procedures established by the Board of Directors.
4. **Resignation.** Any member may resign by filing a written resignation with the Board of Directors.
5. **Expulsion or Disciplinary Action.** Any member may be expelled for due cause as determined by a two-thirds

vote of the Board of Directors. Failure to pay dues, fees, or assessments, or to meet the membership criteria after an initial notification of delinquency or failure to maintain eligibility for membership, is presumed to be adequate reason for expulsion and does not require advance notice to the member or vote by the Board. Any member proposed for expulsion for other reasons is given advance written notice including the reason for the proposed expulsion, the opportunity to contest the proposed expulsion in writing to the Board of Directors, and, if expelled, the final written decision of the Board. The expelled member may appeal the Board’s decision in writing to a three-member panel appointed by the President. The decision of the Appeals Panel is final. The Board of Directors may take other member disciplinary actions, including, but not limited to, reprimand or suspension, in accordance with policies and procedures adopted by the Board from time to time.

6. **Continuing Obligations.** Resignation, reprimand, suspension, or expulsion does not relieve a member from liability for dues, fees, or assessments or other obligations accrued and unpaid as of the effective date of such actions.

ARTICLE III (DUES)

1. **Member Dues, Fees, and Assessments.** Dues, fees, and assessments are determined by the Board of Directors and are subject to verification policies and procedures established by the Board of Directors.
2. **Delinquency.** Any member who is delinquent in paying dues, fees, or assessments for a period of sixty days shall be notified of such failure and suspended as a member, and all member rights and privileges shall cease. If all dues, fees, and assessments are not paid within the succeeding thirty days, the delinquent member is automatically expelled from the Association.
3. **Refunds.** No fees, dues, or assessments shall be refunded.

ARTICLE IV (DIRECTORS)

1. **Directors.** The governing body of the Association is the Board of Directors, which has authority and is responsible for the supervision, control, and direction of the Association in accordance with Directors’ fiduciary duties under applicable law.
2. **Composition of the Board of Directors.** The Board of Directors consists of nine booksellers active in the

day-to-day management and/or operation of a member bookstore and are elected by the Bookstore Members. The Board of Directors shall be representative of the Association's diversity.

3. **Election and Term of Office.** Prior to each annual meeting of the Association, an election shall be held to choose three members of the Board of Directors and, if necessary, to fill any other vacancies. Directors serve staggered terms of three years. At least one Director elected each year shall not have served previously on the Board. Directors shall take office at the Board meeting held in conjunction with the Association's annual meeting. No Director shall have total service of more than two terms on the Board, i.e., total service of six years, after which such person shall be ineligible to serve as a Director again for six years.
 - (a) **Nominating Committee.** The President, with the approval of the Board, shall select the Nominating Committee as a standing committee of the Association. The Nominating Committee shall present the Director candidates (including at least one alternate Director candidate) to the Board for its approval, which shall not be withheld absent good cause, and shall then present the candidates to the Bookstore Members in accordance with these Bylaws and policies and procedures adopted by the Board. The Committee shall be comprised of five booksellers from member bookstores and shall include two current Directors, none of whom shall be nominated for a current vacancy on the Board. The Committee term is one year. One of the Board members shall be appointed as Chair of the Committee. Approximately one hundred and twenty days prior to the annual meeting, the Nominating Committee shall nominate candidates for the Board of Directors and shall announce the nominations to the Bookstore Members.
 - (b) **Petitions.** Any Bookstore Member may submit a petition for a Director candidate. Each petition shall present only one candidate. Petitions shall be received by the Nominating Committee on a date set by the Committee approximately ninety days prior to the annual meeting. The names on the petition shall reflect at least two percent of the Bookstore Members as of January 1 of the year in which the election is to be held and contain original signatures, names, addresses, and telephone numbers for the Bookstore Members in at least five states (with representatives of no one state constituting more than fifty percent of the total number of petition signatures). Upon receipt of a valid petition, the Nominating Committee shall add the petitioned candidate's name to the Director ballot.
 - (c) **Director Ballot.** The Nominating Committee shall mail ballots to all Bookstore Members at least sixty days prior to the Association's annual meeting. The ballots shall be returned at least thirty days prior to the annual meeting. Bookstore Members may write in

candidates for the Director positions.

- (d) **Election Results.** The Director candidates receiving the most votes for the Director positions available out of the total number of ballots marked and returned shall be elected, subject to verification by the Inspector of Elections who has been appointed by the Board.
4. **Vacancies.** If a vacancy occurs on the Board for any reason, the position shall be filled by the Board until the next annual election, at which time the person filling the vacancy may be eligible for nomination as a candidate to stand for election for the remainder of the term of such position, if any. Service to fill a vacant position on the Board with a term remaining of less than one year shall not count toward the limitations on eligibility to serve as a Director.
5. **Meetings.** The Board of Directors meets annually at the same time and place as the Association's annual convention. In addition, there shall be a total of at least three other meetings a year, which must be in different calendar quarters. There shall be notice provided to the Directors by any reasonable means at least fifteen business days prior to each regular meeting. A special meeting of the Board may be held with notice provided by any reasonable means of at least forty-eight hours prior to the meeting. The presence of five Directors constitutes a quorum at any meeting. A majority vote of Directors at a meeting at which a quorum is present is necessary to take action. Proxy voting is not permitted. Upon prior authorization by the Board, a Director may participate in any Board meeting via conference call and shall be counted as present for purposes of quorum and voting.
6. **Removal.** A Director may be removed for adequate reason by a two-thirds vote of the Board of Directors, with the Director being considered for removal not participating in the vote.
7. **Compensation.** Directors do not receive compensation for their services, but shall be reimbursed for authorized expenses.
8. **Attendance.** The Board may establish attendance and other policies and procedures for Directors and Officers.

ARTICLE V (OFFICERS)

1. **Officers.** The Officers of the Association are the President and the Vice President/Secretary.
2. **Qualifications.** Officers shall be members of the Board of Directors and shall have served on the Board for at least one year immediately prior to the date of assuming office.
3. **Election and Term of Office.** After Board approval of candidates for the Board of Directors, the Board shall select the nominees for Officers to appear on the ballot for election of Directors and Officers by Bookstore

Members. Bookstore Members may write in the names of Officer candidates who meet the qualifications established under the Bylaws. If the Bookstore Members fail to approve the nominees for Officers and there are no successful write-in candidates, the Board shall choose the Officers from among the remaining Board members. The Officers shall take office at the Board meeting held in conjunction with the Association's annual meeting and their term of office is one year. A Board member shall not serve more than two terms for each Officer position in any one six-year period. In conjunction with the mailing of ballots for the election of Directors, the Nominating Committee shall mail ballots to all Bookstore Members at least sixty days prior to the Association's annual meeting, and the ballots shall be returned at least thirty days prior to the annual meeting. The Officer candidates receiving the most votes shall be elected, subject to verification by the Inspector of Elections who has been appointed by the Board.

4. **Duties.** The elected Officers perform those duties that are usual to their positions and that are assigned to them by the Board of Directors. The President, as the chief elected Officer of the Association, presides at meetings of the Board. The Vice President/Secretary assumes the duties of the President when the President is unable to perform his or her duties. In addition, the Vice President/Secretary shall be responsible for ensuring that minutes are maintained of Board meetings and that the Board receives timely reports concerning the Association's books, records, and other information necessary for the Directors to fulfill their fiduciary duties.
5. **Vacancies.** If a vacancy occurs for any reason in any Officer position, it is filled for the unexpired term by the Board.
6. **Removal.** An elected Officer may be removed for adequate reason by a two-thirds vote of the Board of Directors, with the Officer being considered for removal not participating in the vote.
7. **Compensation.** Officers do not receive compensation for their services, but shall be reimbursed for authorized expenses.

ARTICLE VI (MEETINGS AND VOTING)

1. **Annual Meeting.** The Association holds an annual member meeting in conjunction with the Association's annual convention at a time and place determined by the Board of Directors. Notice of the meeting, specifying the business to be conducted, shall be provided to Bookstore Members at least thirty days in advance of the meeting.
2. **Special Meetings.** Special meetings of the Bookstore Members may be called by the Board of Directors at any time, or by the President upon written request of ten percent of the Bookstore Members. The notice require-

ments are the same as for an annual meeting.

3. **Notice.** The Chief Executive Officer may give Bookstore Members notice of all annual and special meetings as stated above by any reasonable method permitted by law. The notice shall include a description of the business to be discussed.
4. **Voting and Quorum.** The presence of ten percent of the Bookstore Members, or one hundred Bookstore Members, whichever is less, constitutes a quorum. A majority of Bookstore Members at a meeting at which a quorum is present is necessary to take formal action, except as otherwise provided by law or these Bylaws. Proxy voting is not permitted. Voting without a meeting is permitted in accordance with the New York Not-For-Profit Corporation Law. For purposes of any member vote (except for the election of Officers and Directors), a "majority" means that the number of affirmative votes cast must be at least equal to a quorum.

ARTICLE VII (COMMITTEES AND ADVISORY BODIES)

1. **Committees.** The Nominating Committee consists of five Bookstore Members, as stated in Article IV of these Bylaws. The Board shall appoint an Audit 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 Audit Committee's term is one year.
2. **Advisory Councils.** The Association shall establish one or more Advisory Councils, in accordance with policies and procedures adopted by the Board, to serve as strategic councils assisting the Board of Directors and providing the Association and the Board with a wide spectrum of views on critical issues facing the bookselling industry. Each Advisory Council shall meet at least annually.
3. **Other Committees and Task Forces.** The Board may establish other Committees it deems appropriate. The Board or the Chief Executive Officer also may establish Task Forces.

ARTICLE VIII (ADMINISTRATION)

1. **Chief Executive Officer.** The Board of Directors selects a Chief Executive Officer, who is the principal manager and administrator of the Association and is responsible for the day-to-day operation of the Association and all of its employees, including hiring and firing of Association employees. The Chief Executive Officer may engage staff and/or outside consultants. The Board shall engage the Association's General Counsel.

2. **Policies and Procedures.** The Board of Directors may establish policies and procedures that are consistent with these Bylaws. Robert's Rules of Order shall govern unless otherwise provided for by the Certificate of Incorporation, the Bylaws, or applicable law.
3. **Amendments.** Amendments to these Bylaws may be made upon proper notice at any regular or special meeting of the Bookstore Members, or without a meeting in accordance with New York Not-For-Profit Corporation Law. In either case, amendments to these Bylaws may be made if the entire Board of Directors first approves the proposed amendments by a two-thirds vote and then submits such amendments for approval by the Bookstore Members, either at a meeting or by mail ballot in accordance with the Bylaws and policies and procedures adopted by the Board. Action to amend these Bylaws may be taken either at a meeting or without

a meeting, i.e., by mail ballot, and requires a majority vote of Bookstore Members, as set forth in Article VI, Section 4.

4. **Indemnification.** Directors, Officers, and other authorized employees or agents of the Association shall be indemnified against claims for liability arising in connection with their positions or activities on behalf of the Association to the full extent permitted by law.
5. **Fiscal Year.** The fiscal year for the Association shall be set by the Board of Directors.

As Approved on May 1, 1999

Governance Process Policies

Section I: Governance Commitment

The purpose of the board, on behalf of independent booksellers, is to see to it that the American Booksellers Association (1) achieves appropriate results for its core membership at an appropriate cost and (2) avoids unacceptable actions and situations.

Section II: Governing Style

The board will govern with an emphasis on (1) outward vision rather than internal preoccupation, (2) encouragement of diversity in viewpoints, (3) strategic leadership rather than administrative detail, (4) clear distinction of board and CEO's roles, (5) collective rather than individual decisions, (6) future rather than past or present, and (7) proactivity rather than reactivity. Accordingly,

1. The board will cultivate a sense of group responsibility. The board, not the staff, will be responsible for excellence in governing. Although the board ultimately sets the policy of the association, it shall do so after seeking and receiving input from bodies such as the Booksellers Advisory Council, other members, and the staff of ABA. The board will use the expertise of individual members to enhance the ability of the board as a body rather than to substitute individual judgments for the board's values. The board will allow no officer, individual or committee of the board to hinder or be an excuse for not fulfilling board commitments.
2. The board will direct, control and inspire the Association through the careful establishment of broad written policies reflecting the board's values and perspectives about objectives to be achieved and the means to be avoided. The board's major policy focus will be on monitoring future trends and defining desired long-term outcomes, not on the administrative or programmatic means of attaining the desired outcomes.
3. The board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation, policy-making principles, respect of roles, *communications*, and ensuring continuance of governance capability.
4. The board will monitor and discuss the board's process and performance at each meeting. Self-monitoring will include comparison of board activity and discipline to policies in the Governance Process and Board/Executive Director Linkage categories.

Section III: Board Job Description

The job of the board is to represent the core membership of the American Booksellers Association in demanding appropriate organizational performance. Accordingly,

1. The board will serve as the link between the Association and the membership.
2. The board will produce written governance policies that, at the broadest levels, addresses each category or organizational decision.
 - a. *Ends*: Organizational programs, services, products, effects, outcomes, recipients, and their relative worth (what good for which recipients at what cost?).
 - b. *Executive Limitations*: Constraints on executive authority that establish the prudence and ethics boundaries within all executive activity and decisions must take place.
 - c. *Governance Process*: Specification of how the board conceives, carries out, and monitors its own tasks.
 - d. *Board/CEO Linkage*: How power is delegated and its proper use monitored; the role of the executive director, including authority and accountability.
3. The board will produce assurance of the CEO's performance (with respect to policies 2a and 2b above).
4. The board will, in the process of hiring and negotiating the contract of the CEO:
 - a. Establish a board Negotiating Committee consisting of the President of the board and, at least, one other member of the Board of Directors
 - b. Use independent, third party benchmarking tools which analyze total executive compensation figures in non-profit associations which are similar to ABA
 - c. Have a board vote requiring a majority of the board members present to approve the CEO contract negotiated by the committee and presented to the board for approval
 - d. After approval, the board shall announce to the membership by publishing in BTW and posting a notice in a prominent place on Bookweb.org, that a CEO has been hired and for what term

Section IV: The Board's Agenda

To do its job with a governance style consistent with board policies, the board will follow an annual agenda that (1) completes re-exploration of ends policies and the strategic plan annually and (2) continually improves board performance through board education and enriched input and deliberation. Accordingly,

1. The planning cycle will conclude each year on the last day of **July** so that administrative planning and budgeting can be based on accomplishing a one-year segment of the board's most recent statement of long-term objectives.
2. The planning cycle will start with the board's development of its agenda for the next year.
 - a. Consultations with selected groups for input will be held during the first quarter.
 - b. Governance education and presentations by experts (such as futurists, **financial planners, budgeting experts**, demographers, advocacy groups, staff, etc.) will take place throughout the year.
3. Throughout the year, the board will attend to consent agenda items as expeditiously as possible.
4. Monitoring of the executive director will be included on the agenda if monitoring reports show policy violations or if policy criteria are to be debated, **and annually**.
5. **The annual evaluation** of the CEO will **take place** after a review of monitoring reports, including attainment of strategic plan objectives and deadlines, during the month of **July**.

Section V: Role of the Board Chairperson

The chairperson assures the integrity of the board's process, **serves as a two-way communications conduit between the board and the executive director**, and represents the board to outside parties when appropriate. Accordingly,

1. It is the job of the chairperson to see that the board behaves consistently with its own rules and those legitimately imposed upon it from outside the Association.
 - a. Meeting discussion content will be only those issues which, according to board policy, clearly belong to the board to decide, not the CEO.
 - b. Deliberation will be fair, open and thorough, but also timely, orderly and to the point.
2. The authority of the chairperson consists of making decisions that fall within topics covered by board policies on Governance Process and Board/CEO linkage, except where the board specifically delegates portions of this authority to others. The chairperson is autho-

rized to use any reasonable interpretation of the provisions in these policies.

- a. The chairperson is empowered to chair board meetings, with all the commonly accepted power of that position (for example, ruling and recognizing).
- b. The chairperson has no authority to make decisions about policies created by the board within Ends and Executive Limitations policy areas. **Therefore, the chairperson has no authority to supervise or direct the CEO.**
- c. The chairperson may represent the board to outside parties in announcing board-stated positions and in stating chair decisions and interpretations within the area delegated to him or her.
- d. The chairperson may delegate this authority but remains accountable for its use.

Section VI: Board Members' Code of Conduct

The board commits itself to ethical, businesslike and lawful conduct, including proper use of authority and appropriate decorum when acting as board members. Accordingly,

1. Members must represent unconflicted loyalty to the interests of the core membership of ABA. This accountability supersedes any conflicting loyalty such as that to advocacy or interest groups and membership on other boards and staffs. It also supersedes the personal interest of any board member acting as a consumer of ABA's services.
2. Board members must avoid conflict of interest with respect to their fiduciary responsibilities.
 - a. There must be no self-dealing or any conduct of private business or personal services between any board member and the ABA except as procedurally controlled to assure openness, competitive opportunity and equal access to inside information.
 - b. When the board is to decide upon an issue about which a member has an unavoidable conflict of interest, that member shall absent herself of himself without comment from not only the vote but also from the deliberation.
 - c. Board members must not use their positions to obtain employment for themselves, family members or close associates. Should a board member desire employment, he or she must first resign from the board.
 - d. Members will annually disclose their involvement with other organizations, with vendors or any other associations that might produce a conflict.
3. Board members may not attempt to exercise individual

authority over the association except as explicitly set forth in board policies.

- a. Board members' interaction with the CEO or with staff must recognize the lack of authority vested in individuals except when explicitly board-authorized.
 - b. Board members' interactions with public, media or other entities must recognize the same limitation and the inability of any board member to speak for the board except to repeat explicitly stated board decisions.
 - c. Board members will give no consequence or voice to individual judgments of performance by the CEO or other staff.
 - d. *The board will act as a whole and members must support the action of the whole after full and open debate among the members. If three members of the board vote against any material matter, the dissenting views they held in common will be included in the minutes without attribution.*
4. Board members will respect the confidentiality appropriate to issues of a sensitive nature.

Section VII: Board Committee Principles

Board committees and task forces, when used, will be assigned so as to reinforce the wholeness of the board's job and so as never to interfere with delegation from the board to the CEO. Accordingly,

1. Board committees are to help the board do its job, never to help or advise the staff. Committees and task forces ordinarily will assist the board by assessing future trends, preparing policy and strategy alternatives and implications for board deliberation. In keeping with the board's broader focus, board committees and task forces will normally not have dealings with current staff operations.

2. Board committees and task forces may not speak or act for the board except when formally given such authority for specific and time-limited purposes. Expectations and authority will be carefully stated in order not to conflict with authority delegated to the CEO.
3. Board committees and task forces cannot exercise authority over staff. Because the CEO works for the full board, he or she will not be required to obtain approval of a board committee before an executive action.
4. Board committees and task forces are to avoid over-identification with organizational parts rather than the whole. Therefore a board committee that has helped the board create policy on some topic will not be used to monitor organizational performance on the same topic.
5. Committees and task forces will be used sparingly and ordinarily in an *ad hoc* capacity.
6. This policy applies to any group that is formed by board action, whether or not it is called a committee or task force and regardless whether the group includes board members.

Section VIII: Cost of Governance

Because poor governance costs more than learning to govern well, the board will invest in its governance capacity. Accordingly,

1. Board skills, methods and supports will be sufficient to assure governing with excellence.
 - a. Training and retraining will be used liberally to orient new members and candidates for membership, as well as to maintain and increase existing member skills and understandings.
 - b. Outside monitoring assistance will be arranged so that the board can exercise confident control over organizational performance. This includes but is not limited to a fiscal audit.
 - c. Outreach mechanisms will be used as needed to ensure the board's ability to listen to the viewpoints and values of ABA's core membership.

Board/CEO Linkage Policies

Section I: Board/CEO Linkage

The board's sole official connection to the operational organization, its achievements and conduct will be through a CEO who shall serve as the CEO of the association.

Section II: Unity of Control

Only decisions of the board acting as a body are binding on the CEO. Accordingly

1. Decisions or instructions of individual board members, officers or committees are not binding on the CEO except in rare instances when the board has specifically authorized such exercise of authority.
2. In the case of board members or committees requesting information or assistance without board authorization, the CEO can refuse such requests that require, in the CEO's opinion, a material amount of staff time or funds, or are disruptive.

Section III: Accountability of the CEO

The CEO is the board's only link to operational achievement and conduct, so that all authority and accountability of staff, as far as the board is concerned, is considered the authority and accountability of the CEO. Accordingly

1. *The CEO is accountable to the board for the performance of the association and all its subsidiaries. No subsidiary organization may be established outside the parameters of these policies.*
2. The board will never give instructions to persons who report directly or indirectly to the CEO.
3. The board will refrain from evaluating, either formally or informally, any staff member other than the CEO.
4. The board will view the CEO's performance as identical to organizational performance, so that organizational accomplishment of board-stated outcomes and avoidance of board-proscribed means will be viewed as successful performance by the CEO.

Section IV: Delegation to the CEO

The board will instruct the CEO through written policies and strategic plans that prescribe the organizational outcomes to be achieved and describe organizational situations and actions to be avoided, allowing the CEO

to use any reasonable interpretation of these policies. Accordingly

1. The board will develop policies instructing the CEO to achieve certain results, for certain recipients, at a specified cost. These policies will be developed systematically from the broadest, most general level to more defined levels. These will be referred to as *outcomes or ends policies*, and will be expressed in the board's strategic plan.
2. The board will develop policies that limit the latitude the CEO may exercise in choosing the organizational *means, or strategies and tactics*. These policies will be developed systematically from the broadest, most general level to more defined levels, and will be called *executive limitations policies*.
3. As long as the CEO uses *any reasonable interpretation* of the board's executive limitations policies, the CEO is authorized to establish all further policies, make all decisions, take all actions, establish all practices and develop all activities.
4. The board may change its ends and executive limitations policies, thereby shifting the boundary between board and CEO domains. By doing so, the board changes the latitude of choice given to the CEO. But as long as any particular delegation is in place, the board will respect and support the choices of the CEO.

Section V: Monitoring Performance of the CEO

Systematic and rigorous monitoring of the CEO's performance will be solely against his or her only expected job outputs: organizational accomplishment of board policies on ends and organizational operation within the boundaries established in board policies of executive limitations. Accordingly

1. Monitoring is simply to determine the degree to which board policies are being met. Data that do not do this will not be considered to be monitoring data.
2. The board will acquire monitoring data by one or more of three methods: (a) by internal report, in which the CEO discloses compliance information to the board, (b) by external report, in which an external, disinterested third party selected by the board assesses compliance with board policies, and c) by direct board inspection, in which a designated member or members of the board assess compliance with the appropriate

- policy criteria.
3. In every case, the standard for compliance shall be *any reasonable CEO interpretation* of the board policy being monitored.
 4. All policies that instruct the CEO will be monitored at a frequency and by a method chosen by the board. The board can monitor any policy at any time by any method, but will ordinarily depend on a routine schedule.

<i>Policy</i>	<i>Method</i>	<i>Frequency</i>
Treatment of members and customers	Internal	Annually
Treatment of staff	Internal	Annually
Financial planning and budgeting	Internal	Quarterly
Financial condition and activities	Internal	Quarterly
	External	Annually
Emergency succession of executive	Internal	Annually
Compensation and benefits	Internal	Annually
	External	Biannually
Communication and support	Direct	Annually
Inspection		
Ends/outcomes policies	Internal	Quarterly

ABA's governance policies are based on a model suggested in "Reinventing Your Board," by John and Miriam Mayhew Carver. Model used with permission. Copyright © 1997 Jossey-Bass, Inc., Publishers, 350 Sansome Street, San Francisco, CA 94104 (800) 956-7739.

Resolution Submitted by the Task Force on Advisory Bodies

Whereas Goal M-1 of the strategic plan charges the ABA to create an organizational structure that will most effectively deliver the outcomes sought in the program goals and provide the association with strong and effective leadership, and

Whereas Objective M-1D of the strategic plan calls for the creation of “a broadly representative national advisory body of booksellers and others,” and

Whereas the ABA Board desires to meet this goal and this objective while at the same time increasing representational diversity and further democratizing the ABA,

Be it resolved that the ABA Board, in accordance with the guidelines submitted by the Task Force on Advisory Bodies, will establish a Booksellers Leadership Council and a Book Industry Advisory Forum to provide input to the Board.

Passed unanimously by the ABA Board on January 30, 1999.

Resolution Submitted by the Task Force on Advisory Bodies

(As Approved by the ABA Board of Directors, January 30, 1999)

Mission

The mission of the ABA advisory bodies is to engage in the ongoing monitoring of economic, technological, demographic, social, political, cultural, and environmental trends and to advise the Association of emerging opportunities and threats revealed by these trends.

Goals of Advisory Bodies

1. Provide significant input into the ABA strategic front-loading process, including a formal report to the Strategic Planning Committee/Board of Directors at the beginning of the annual strategic planning cycle.
2. Identify significant emerging opportunities and threats to the membership and advise the leadership of ABA of these developments on a timely basis.

Rules of Procedure

1. All members of the advisory bodies serve as members-at-large and are selected for their individual expertise rather than as a representative of the organizations to which they belong or by whom they are employed. In the event of an absence, the ABA President may designate alternates.
2. By accepting an appointment to an ABA advisory body,

the member agrees to carry out the duties and responsibilities of membership, including but not limited to completing assignments and attending meetings or on-line conferences. The President of ABA may remove any member of an advisory body should that member be unable to fulfill these responsibilities.

3. Each member of an advisory body will be assigned to monitor emerging issues within one of six future areas: technology, economics, politics/government, society, environment, and arts and letters. Several members will be grouped into “cells” monitoring each area. Members of such cells will share their information electronically and meet on-line to discuss emerging trends in their area. At least once a year, the monitoring cells will report to the other advisory group members and discuss the collective impact of all the research.

4. Members of the ABA staff will participate and provide organizational support as necessary and will be assigned to serve as liaisons with each “cell.” Members of advisory bodies will advise their staff liaison if they identify a trend that should be brought to the immediate attention of the ABA leadership.

5. ABA governance, tactical, and other issues should be directed to either the ABA President or Chief Executive Officer, as appropriate.

6. ABA will reimburse members of advisory bodies for expenses according to ABA policies for such expenses.

Resolution on ABA Booksellers Advisory Council (BAC)

(As passed by the ABA Board of Directors, July 2002, replacing previous resolution on ABA Booksellers Advisory Council of January 30, 1999.)

Given several years of actual practice and experience, the overall mission of the ABA Booksellers Advisory Council (BAC) is:

1. to review existing ABA programs and services – and to make recommendations to the ABA Board of Directors as to how these programs and services can be made more effective;
2. to serve as a sounding board on issues facing the bookselling community;
3. to help insure that the ABA Board of Directors is receiving maximum input from a wide range of diverse stores;
4. to actively participate in the association's ongoing strategic planning process; and
5. to monitor emerging threats and opportunities.

Members of the BAC will be appointed by The President of ABA with the advice of the staff, and the approval of the Board, with goals of diversity and inclusivity. BAC members must be from ABA member stores. There will be 25 members serving two year alternating terms. Each of the ten regional bookseller associations (GLBA, MSIBA,

MPBA, NAIBA, NCIBA, NEBA, PNBA, SCBA, SEBA, and UMBA) will be asked to designate one member of the BAC. At the discretion of the ABA President, bookseller constituency organizations (i.e. ABC, FBN, etc.) will also be asked to designate a BAC member. The balance of the BAC membership will be selected to reflect ABA's diverse membership.

BAC meetings will be chaired by the President of ABA (or his or her designee) and will be supported by the ABA staff under the direction of the CEO. The BAC will strive to meet in-person twice-a-year; once in conjunction with ABA's Annual Convention (at BEA); and, at one other time to be determined by the ABA President. In addition, the BAC may meet via conference call and/or be conferred with through email or fax. Reports of the BAC meetings will be provided to the ABA Board at the Board meeting immediately following the BAC meeting. ABA will reimburse BAC members for any additional expenses they incur to attend BAC meetings.

While it is understood that input from the BAC is highly valued, it is only advisory and any recommendations are not binding on the ABA Board.

Audit Committee Report for Fiscal Year 2000

This letter provides a report from the ABA Audit Committee covering fiscal year 2000. As the committee is newly formed as a consequence of governance changes outlined in recent changes to ABA's Bylaws, this report describes the committee's objectives and methodology in some detail as well as providing a review of the committee's findings. The report has three sections:

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

COMMITTEE OBJECTIVES AND METHODOLOGY

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

“The Board shall appoint an Audit 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 Audit Committee's term is one year.”

The members of this year's committee are Richard Howorth (Chair), Gayle Shanks, and Ned Densmore.

As the description of the committee's function in the Bylaws is cursory, one of the committee's first activities was to draft objectives for use in its first year. (Note that the committee is recommending that the Board review these objectives in light of this year's experience and after modifying them as appropriate, publish a detailed set of committee objectives in the ABA Policy Manual for use of future committee members)

Accordingly, the committee established the following description of its planned work for this year:

- The purpose of Audit Committee is to serve as an outside review body to point out issues where the Board and management may not have arm's length perspectives.
- Using this approach, the committee sees two areas of responsibility. It anticipates that most of its work will be focused on the first of the two areas, but will also investigate the other as appropriate. The two areas are as follows:
 1. Pointing out when the relationship between the Board and senior management is not functioning according to the ABA's organizational

design as laid out in the Bylaws and the Policy Manual or when both bodies are not otherwise observing their obligations as outlined in these documents

2. Pointing out when 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. Consequently it will not address the effectiveness of the Board or management, except as regards the items outlined above

The committee's methodology was to gather information concerning its two objectives through interviews and other sources. Specifically, the committee considered the following:

1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with three current Board members and four staff members:
 - Neal Coonerty, President
 - Ann Christopherson, Vice President and Secretary
 - Matt Miller
 - Avin Domnitz, Chief Executive Officer
 - Oren Teicher, Chief Operating Officer
 - Eleanor Chang, Chief Financial Officer
 - Carl Lennertz
2. Discussions with the ABA's lead auditor, Jamie Klein, KPMG
3. The financial auditor's opinion letter for fiscal year 2000

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 that overall, following its first full year of implementation, the ABA's governance mechanisms appear to be working well. The committee noted that, in general, satisfaction with the current arrangements was high among both the

Board and staff, and that the few issues that arose appeared generally to be regarded as matters of modest concern.

With that said, the committee noted four areas where issues were raised. These areas include: 1) Certain specifics of overall governance; 2) Certain conflict of interest procedures; 3) Future environmental scanning approaches; and 4) Assurance that fiduciary responsibility continues to be met with regard to major advocacy initiatives. Each finding is described in more detail below.

1. Certain Specifics of Overall Governance

Although, as noted above, overall regard for current governance mechanisms was high, several minor issues arose:

- Several Board members remarked during their interviews that it would be useful to briefly review the details of ABA's governance design with the Board from time-to-time, and in particular, to ensure that new Board members receive orientation on this subject.
- On a related subject, it appeared that while the current Board focuses substantially on strategy issues, discussion time on governance and policy issues as outlined in the Board Job Description on page 2-1 of the Policy Manual has been limited. At the same time, this circumstance may simply reflect the fact that this committee (which has such matters as its subject) had not yet convened.
- Board members noted that with a smaller Board, participation becomes crucial. Consequently, while recognizing that inevitable conflicts may arise, some formalization of attendance guidelines was discussed.
- As noted earlier, the Audit Committee itself feels that clarification of the committee's purpose would be helpful, and that since the current name seems to have heavily financial connotations, perhaps a name change would be in order as well.
- Various interviewees noted that the new Board/staff structure outlines an ad hoc task force mechanism for dealing with special issues that has not been much used, and which might have benefits in certain cases. Specifically, it was noted that because there are no longer committee chairs who take a great interest in specific topics, the Board's emphasis tends to result largely from either the President or the Executive Director's guidance. Given that the people serving in those roles are likely to have more inclination toward certain issues than toward others, some issues may receive less emphasis than if there were committee chairs for whom those issues were a major focus. Consequently, it was suggested that the Board peri-

odically review its agenda for key issues that might require additional emphasis, and consider creating an ad hoc task force in such cases led by a person with appropriate interests and expertise.

- Several interviewees also noted that with a smaller Board it is more difficult to achieve both wide representation and a diverse set of skills. Specifically it was noted that the current Board is richer in some skill areas than in others, particularly noting a relative lack of deep financial skills. Consequently, the suggestion arose that the Nominating Committee consider greater emphasis on balancing technical skills across the Board.

2. Conflict of Interest Procedures

The committee also heard nothing of major concern regarding conflict of interest procedures, but did find that some clarification of policy might be of benefit in certain areas:

- Some Board members noted that the conflict of interest disclosure form that is included in section 5-2 of the ABA Policy Manual may not be up-to-date for all Board and senior management members, and that periodically all Board and senior management members should see the packet of all completed forms in the interest of transparency.
- Board members also suggested that as part of the brief orientation described above, there be a review of the ABA's conflict of interest guidelines with all new Board members.
- It was suggested by various interviewees that the default mechanism for resolution of possible conflict-of-interest issues at the Board level be to pass the issue to the Audit Committee for review and recommendations.
- Finally, there were several suggestions that the conflict-of-interest guidelines in section 5-1 of the Policy Manual be somewhat strengthened to include mechanisms for dealing not just with clear conflict of interest, but situations where there is the possibility of appearance of conflict of interest, and several such situations were raised. Although none of these situations seemed of material risk, they nonetheless raised the possibility that the guidelines deserve review.

3. Future Environmental Scanning Approaches

Almost all interviewees noted that the ABA has greatly improved its focus on emerging trends and possible future issues such as Internet bookselling, e-books, and the like,

and felt that many appropriate programs and actions have been taken in response to that focus.

On the other hand, almost all interviewees also noted that:

- Implementation of the environmental scanning approach outlined in the ABA’s governance mechanisms (page 2-6 of the Policy Manual) has been only partially successful, with only very limited success using the originally devised organization of “cells” to monitor technology, economics, politics/government, society, environment, and arts and letters.
- Specifically, while the Booksellers Advisory Council and the Industry Advisory Forum are clearly contributing significantly, their work has tended to be limited to providing a perspective, from members’ respective places in the industry, in real time during the sessions in which they participate.
- Consequently, for in-depth review of the topics contemplated in the “cell” approach, the Strategic Planning Committee has had to rely on the fact that various members of staff have environmental scanning of these topics as a natural part of their jobs (for instance, technology for the Booksense.com people or society for the marketing people).
- However, since reporting to the Board on these topics is not an explicit part of staff’s duties, more often than not, the Board hears staff’s views on what to do about the environmental changes rather than a detailed review of the anticipated changes themselves.

4. Ensuring that Fiduciary Responsibility Continues to Be Met

The committee’s questions regarding fiduciary responsibility are in two parts. First is the question of whether any activity or matter that the Board has endorsed and is currently underway or is anticipated is of great materiality—that is, could threaten the long-term success or existence of the ABA.

The second question is whether the Board has applied prudent business judgment and otherwise fulfilled their obligations to the membership with regard to this activity as Directors under the bylaws and policies of the ABA. There was unanimous agreement that this was the case.

At the same time, the committee did note that several circumstances about the current litigation made it particularly difficult for the Board to ensure that it had met its fiduciary responsibility in as public and open a fashion as it would like, and thus that going forward, it would be worthwhile to address these concerns as circumstances

allow. The difficulties that the Board confronted include the following:

- The suit in question involves a highly-restrictive protective order that precludes disclosure of many matters beyond a very limited set of individuals.
- Even absent the protective order, it is not possible to fashion an aggressive legal strategy that involves consistent disclosure of all facts and circumstances to the membership because that would be tantamount to consistent disclosure to the suit’s defendants.
- Litigation, by its very nature, is highly uncertain in matters of both outcome and cost.

With these restrictions in mind, and noting that new opportunities for determining the direction of the ABA’s advocacy approach will come after this suit reaches trial, the committee considered the question of how the Board could best ensure that fiduciary responsibility continues to be met with regard to major advocacy initiatives going forward. On this matter the committee heard several suggestions, including working with an outside expert (presumably General Counsel) to review the costs and benefits of a variety of scenarios for post-trial pursuit of ABA’s advocacy agenda; publishing a summary of the results of that review to the membership as a whole; and generally maximizing the availability of information to the membership once the protective order is no longer in place, perhaps through a detailed series of articles in *BTW*.

RESULTING RECOMMENDATIONS

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

1. Implement a brief orientation session for new Board members that includes review of both the ABA’s governance design, and of conflict-of-interest procedures. One option would be for an Audit Committee member to lead this discussion.
2. Include a periodic discussion of governance mechanisms and policy matters in the Board’s annual agenda, presumably drawing on the Audit Committee’s annual report. Ask the Vice President/Secretary (as the documenter of Board actions) to be responsible for ensuring that any resulting changes are properly documented in the Policy Manual or elsewhere as appropriate.
3. Include a more specific Board attendance policy in the Policy Manual that recognizes both the existence of inevitable scheduling problems and the importance of consistent Board attendance

given the Board's small size

4. Include a more specific description of the Audit Committee's objectives and methodology in the Policy Manual. Also, consider a clarifying name change.
5. Consider increased use of ad hoc task forces, particularly for matters of significant financial importance or complexity
6. Ask the Nominating Committee to consider increased emphasis on breadth of technical skills on the Board
7. Update the conflict-of-interest forms for all Board and senior management members, and disseminate the completed forms to the Board and senior management
8. Pass any existing or future conflict-of-interest issues to the Audit Committee for review
9. Consider modifying the conflict-of-interest policy to include review of all situations where there is even appearance of conflict-of-interest, understanding that review will by no means necessarily result in a recommendation that the possible appearance of conflict requires a change of relationship
10. Review the use of "cells" for environmental scanning, and consider supplementing or replacing this source of input to the Strategic Planning Committee with a brief overall annual review by staff of changes within the six future areas, and in-depth reports on any areas where significant developments have occurred.
11. Work with General Counsel or some other independent expert to evaluate cost/benefit scenarios for future advocacy allowing for the possibility of a victory, a defeat, or a mixed decision in the pending suit.
12. Consider publishing a summary report to the membership following this evaluation.
13. Provide any other information that the Board deems useful to membership-wide deliberation on this matter through publications, such as *BTW*, forums, and the like.
14. In general, continue regular review of costs and benefits related to all major initiatives and programs of the organization, including litigation and Book Sense.

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

See Appendix B for Resulting Actions.

Appendix A

Audit Committee Interview Guide and Average Responses

Audit Committee Report for Fiscal Year 2000

and good governance. Please feel free to contact any committee member if questions arise.

Introduction

Thanks for meeting with us.

We are conducting interviews of a representative group of Board members and management team members as part of the function of the Audit Committee.

In our interview we'd like to explain a bit about the Audit Committee's charter, and then ask you some questions related to that charter.

Though we will be following an interview guide, please feel free to comment on any topic that you feel is relevant at any point. All responses are confidential.

Purpose of the Audit Committee

- Purpose of Audit Committee is to serve as an outside review body on three issues where the Board and management may not have arm's length perspectives. We anticipate that most of the committee's work will be focused on the first of the three issues, but will ask a few questions about the other two for completeness.
- The three issues are:
 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. Note that the hurdle for committee involvement is quite high, and it is expected that this role is unlikely to come into play.
- 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. Consequently we will not be asking your opinions of the effectiveness of the Board or management, except as regards fiduciary responsibility.

Questions on the Board/Management Relationship and Obligations

1. As you know, the ABA's Policy Manual outlines Governance Process Policies in section two. The following questions relate to those expectations.
2. On a seven point scale (7 is high), how well is the Board accomplishing the following? Feel free to add comments as well:
 - a. Initiating policy as appropriate rather than merely reacting to staff initiatives? 4.9
 - b. Monitoring future trends? 4.4
 - c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes? 5.3
 - d. Maintaining internal discipline on matters such as attendance, preparation, communications? 4.5
 - e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and Policy Manual? 4.8
 - f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost? 5.8
 - g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority? 6.2
 - h. Assuring that the performance of the Executive Director is consistent with the Board's desires and expectations? 5.5
 - i. Revising as appropriate the ABA's end policies and strategic plan within the last year? 5.2
 - j. Reviewing the Executive Director's performance as outlined in the Policy Manual during the month of July? 4.0

- k. Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point? 6.1
- l. Using the chairperson as a two-way communication conduit with the Executive Director? 5.6
- 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? 6.9
- 3. 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? 6.3
 - 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? 6.3

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) All No
- 2. Have Board members failed to absent themselves

as appropriate if any unavoidable conflict of interest arises? (Y/N) 1 Yes

- 3. Has any Board member used their position to obtain employment for themselves, family members, or close associates? (Y/N) All No
- 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) Some Yes
- 5. If the answer to any of the above is yes, please provide details.

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? Unanimous Yes
- 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? Unanimous Yes

* * *

Thank you for your participation. Are there any topics that you feel that we should have covered that we have not had a chance to speak about?

Appendix B

Resulting Recommendations and Actions
 Audit Committee Report for Fiscal Year 2000

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

1. Implement a brief orientation session for new Board members that includes review of both the ABA's governance design, and of conflict-of-interest procedures. One option would be for an Audit Committee member to lead this discussion.

Action: The Board passed the recommendation, but chose not to have the Committee take part in the orientation. The President, Vice-President, and Executive Staff of the Association will lead the session jointly.

2. Include a periodic discussion of governance mechanisms and policy matters in the Board's annual agenda, presumably drawing on the Audit Committee's annual report. Ask the Vice President/Secretary (as the documenter of Board actions) to be responsible for ensuring that any resulting changes are properly documented in the Policy Manual or elsewhere as appropriate.

Action: The Board passed the recommendation.

3. Include a more specific Board attendance policy in the Policy Manual that recognizes both the existence of inevitable scheduling problems and the importance of consistent Board attendance given the Board's small size.

Action: The Board passed the recommendation and instructed staff to prepare a draft attendance policy for discussion at the next appropriate time. When completed the policy document will be included in the Policy Manual.

4. Include a more specific description of the Audit Committee's objectives and methodology in the Policy Manual. Also, consider a clarifying name change.

Action: The Board passed the recommendation and instructed staff to draft a revised description, objectives, and methodology document for the newly named Governance Review Committee. When completed the document will be included in the ABA's Policy Manual.

5. Consider increased use of ad hoc task forces, particu-

larly for matters of significant financial importance or complexity

Action: The recommendation was passed.

6. Ask the Nominating Committee to consider increased emphasis on breadth of technical skills on the Board

Action: The Board declined to issue this recommendation to the Nominating Committee as they felt the Committee was already well aware of this need and was dealing with it in a responsible and responsive manner.

7. Update the conflict-of-interest forms for all Board and senior management members, and disseminate the completed forms to the Board and senior management

Action: The Board passed the recommendation, including the words "and discuss" after the word disseminate. A process was put in place to redraft the conflict document and after discussion and finalization, to place it in the Policy Manual.

8. Pass any existing or future conflict-of-interest issues to the Audit Committee for review

Action: While thanking the Committee for their offer of help, the Board declined this recommendation. The Board felt that existing systems and processes are adequate to responsibly handle any conflict situation that may arise.

9. Consider modifying the conflict-of-interest policy to include review of all situations where there is even appearance of conflict-of-interest, understanding that review will by no means necessarily result in a recommendation that the possible appearance of conflict requires a change of relationship

Action: The Board declined this recommendation expressing the opinion that the process invoked in Recommendation 7, above, will adequately address this issue.

10. Review the use of "cells" for environmental scanning, and consider supplementing or replacing this source of input to the Strategic Planning Committee with a brief overall annual review by staff of changes

within the six future areas, and in-depth reports on any areas where significant developments have occurred.

Action: While not specifically passing the recommendation, as worded, the Board acknowledges difficulty in instituting an efficient system of environmental scanning and is working towards finding a solution to this problem in the near future.

11. Work with General Counsel or some other independent expert to evaluate cost/benefit scenarios for future advocacy allowing for the possibility of a victory, a defeat, or a mixed decision in the pending suit.

Action: Although the Board accepted this recommendation they wish to make clear that they understand this sort of analysis is an important part of their fiduciary responsibility, and that they did, in the recently completed litigation, do such analysis, and will, certainly, conduct similar extensive examinations in the future, should the occasion arise.

12. Consider publishing a summary report to the membership following this evaluation

Action: The Board declines to accept this recommen-

ation.

13. Provide any other information that the Board deems useful to membership-wide deliberation on this matter through publications such as *BTW*, forums, and the like.

Action: The Board declines to accept this recommendation.

14. In general, continue regular review of costs and benefits related to all major initiatives and programs of the organization, including litigation and Book Sense

Action: The Board accepts this recommendation of the committee with the elimination of the final phrase. The Board clearly understands their responsibility to conduct such cost-benefit reviews of all ABA programs be they major or otherwise.

Governance Review Committee

The then-named Audit Committee, in its first year, made the following recommendation to the Board of Directors:

“INCLUDE A MORE SPECIFIC DESCRIPTION OF THE AUDIT COMMITTEE’S OBJECTIVES AND METHODOLOGY IN THE *POLICY MANUAL*. ALSO, CONSIDER A CLARIFYING NAME CHANGE.”

The Board in accepting the recommendation changed the name of the Committee to the Governance Review Committee and put forth the following charge and suggested methodology. The Committee, in any particular year is free to change the methodology in order to accomplish their goals.

COMMITTEE OBJECTIVES AND METHODOLOGY

The Governance Review Committee (formerly the Audit Committee) is constituted based on the relevant section of Article VII.1 of the ABA Bylaws. Following the charge of the Bylaws:

The Board shall appoint a Governance Committee constituted of three Bookstore Members, none of whom is a member of the Board, but one of whom is a previous member of the Board, to review annually the Association, Board and Officers’ practices with respect to whether the relationship between the Board and senior management is functioning according to these Bylaws and any other policies and procedures adopted by the Board. The Governance Committee shall also supervise resolution of any issues where the Board or the Association staff has a conflict of interest. The Governance Committee shall also provide oversight if there is a material question as to whether the board is carrying out its fiduciary responsibility. However, such oversight shall be undertaken only in the event there is no reasonable doubt that the Board has

failed to carry out its fiduciary responsibility. The Governance Committee may in its sole discretion elect in the year following a full Committee review to have the review undertaken only by the Chairman of the Governance Committee. The members of the Governance Committee shall serve for a two renewable one year terms provided that the Chairman of the Committee shall be in the second year of his or her term and shall then continue, if possible for a third one year term on the Committee to maintain continuity.

As a suggested methodology the committee may gather information concerning its objectives through interviews and other sources. Specifically, the committee may consider the following:

1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with three current Board members and staff members.
2. Discussions with the ABA’s lead auditor.
3. Review of the financial auditor’s opinion letter for the last fiscal year.
4. A discussion with the Association’s outside General Counsel.
5. Reviewing the minutes of Board meetings or any other Association documents, including publications and correspondence, that they would find helpful in fulfilling their obligations, so long as that review would not violate any rule of privilege that may apply.

The result of the process is to be a written report to the Board, outlining the Committee’s methodology and findings, with recommendations to the Board based upon those findings. The report should be presented to the Board no more than sixty (60) days after the process has been completed.

Governance Review Committee Report for Fiscal Year 2001

March 4, 2002

This letter provides a report from the ABA Governance Review Committee covering fiscal year 2001. The report has three sections:

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

It is worth noting that while last year's report described the committee's objectives and methodology in substantial detail (as it was the committee's first year in place), this year's report covers these matters in less detail.

COMMITTEE OBJECTIVES AND METHODOLOGY

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

"The Board shall appoint an Governance Review 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 Review Committee's term is one year."

The members of this year's committee are Gayle Shanks (Chair), Chuck Robinson, and John Barringer. As of this year, the committee's function is described in substantial detail in the ABA's Policy Manual.

As was true last year, the committee's methodology was to gather information concerning its two objectives through interviews and other sources. Specifically, the committee considered the following:

1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with two current Board members and four staff members:

- Ann Christophersen, Vice President and Secretary
- John Bennett, Board member
- Avin Domnitz, Chief Executive Officer
- Oren Teicher, Chief Operating Officer
- Eleanor Chang, Chief Financial Officer
- Len Vlahos, Director of BookSense.com

2. Confidential interviews with five Regional Presidents and Executives

- Luanne Kreutzer, President NWBA
- Wanda Jewell, Executive Director, SEBA
- Rusty Drugan, Executive Director, NEBA
- Lisa Knudsen, Executive Director, MPBA
- Jim Dana, Executive Director, GLBA

3. Discussions with the ABA's lead Auditor, Charlene Laniewski, KPMG

4. The financial Auditor's opinion letter for fiscal year 2001

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 from last year, the governance mechanisms appear to be working even better than they were at the time of that review. 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.

Indeed, several responses to last year's recommendations received notable praise, including the Board orientation session (which was unanimously deemed a great success) and the implementation of an annual calendar for the Board with several key governance items scheduled each year.

With that said, the committee noted several areas where issues were raised (although substantially fewer issues than last year). Each finding is described in more detail below.

1. The ABA's conflict-of-interest procedures have been the subject of significant fine tuning over the past year, resulting in a thorough system applying to Board members and senior staff. However, as the second level of management (Director level) has matured in their positions, more financial responsibility appears

to be lying with them, particularly in the areas of Book Sense and booksense.com. Consequently, the committee wonders if an extension of the existing conflict-of-interest procedures to that level of the organization would be prudent.

2. The environmental scanning process, which was the subject of a committee recommendation last year, appears to continue to need attention. Virtually everyone interviewed rated the two questions on this matter at or near their lowest score. And although ongoing management review of relevant issues, Bookseller Advisory Council brainstorming, and some staff time directed to the matter appear to direct significant attention to new developments in the external environment, those mechanisms have not been formalized. At the same time the official mechanisms in the Bylaws and Policy Manual seem to have limited basis in reality.
3. The other topic that received a number of low scores was whether the Board has been "Initiating policy as appropriate rather than merely reacting to staff initiatives". Several people explained that, in part, their low score reflects the superior staff work that is presented to the Board, resulting in little explicit demand for the Board to be the initiators as issues arise. Nonetheless, there appeared to be an overall sense that it would be well for the Board to increase its focus on serving as an initiator of ideas, at least on occasion, and particularly with regard to financial matters.
4. The Governance Review Committee also reflected on how limited the number of issues was that came up in interviews this year (particularly as compared to last year), and accordingly has discussed that possibility that the committee's work might be accomplished more efficiently with some moderate changes in procedure. The committee also recognized that interviews with Regional executives and officers required a completely different set of questions than those for Board and Staff, and that in the future questions for outside groups should be distributed by the Committee in advance so that interviewees may prepare.
5. Several interviewees believed that the finances of booksense.com achieve the threshold of "great materiality", although everyone interviewed felt that the Board was meeting its fiduciary responsibilities in this and all other matters. Given that the Auditor also considers that the issue is material, the committee will recognize it, while at the same time recognizing that the Board appears to be acting responsibly with regard to the issue in question.
6. On the subject of Regional executives and officers, there appear to be no governance issues at hand. To take advantage of the communications opportunity afforded by the committee's interviews, several minor non-governance issues that were raised are covered in

a separate note to the Board.

RESULTING RECOMMENDATIONS AND ACTIONS TAKEN

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

1. Expand the conflict-of-interest procedures (particularly the use of conflict-of-interest forms) to include Directors on ABA's staff, and disseminate these additional completed forms to the Board and senior management on an annual basis.

Action: The Board of Directors accepts the recommendation with the following caveat. The Board feels that the CEO should exercise his/her discretion as to which staff should be required to sign a conflict of interest statement. As with the Board, where the conflict statements are reviewed by the President, as opposed to the whole Board, the CEO would review and address on conflict situations involving staff as a part of his/her staff management responsibilities. The Board of Directors is charged with the responsibility of addressing any conflict situation involving the CEO.

The Board went further with the conflict of interest discussion. They felt a need to be reminded of this issue. It was decided to include the Conflict of Interest Policy in the Board material notebook that is sent to Board Members before each Board meeting.

2. Have the Board create specifications regarding desired output from the environmental scanning process, then ask staff to create a mechanism (at least on a trial basis) for accomplishing these specifications. Once a proven mechanism is in place, alter the relevant sections of the Policy Manual to reflect this change.

Action: The Board accepts this recommendation. In the discussion of this issue it was decided that a strict adherence to the "spheres" model was impractical, but that some more informal mechanism should be devised and implemented. It was decided that the series of meetings between the Board and industry participants (publishers) should be expanded to include representatives from outside of the bookselling/publishing world. There was acknowledgement that the recent meetings and discussions with Michael Murphy about LIBRIS, and the representatives from Reed Exposition Services about the trade show world were, in fact, environmental scanning. Further it was decided that each Board member should be much

more actively engaged in the process of forwarding relevant articles of interest to others on the Board. Finally, the staff was instructed to rewrite the relevant sections of the Policy Manual to reflect the actual practice of environmental scanning taking place on the ABA Board.

3. Consider increasing agenda time devoted to brainstorming in Board meetings. This would be to allow Board members more opportunity to discuss new ideas and initiatives in addition to their role of responding to staff suggestions and recommendations.

Action: The Board accepts this recommendation with the proviso that such time may be provided outside of the formal structure of the Board meeting. Further, although brainstorming may be too loose a concept for inclusion in a formal Board agenda, a specific item regarding recent news and its impact on bookstores and bookselling would be in order.

4. Consider altering the process used by the Governance Review Committee in two ways: 1) Distribute the committee's questionnaire by email, requesting a written response in advance of in-person interviews; and 2) Depending on the nature of those responses, allow the committee to forego in-person interviews in alternate years if they so choose. 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.

Action: The Board accepts this recommendation and will implement this procedure moving forward.

5. Continue to focus on the cost of booksense.com as a material expense, though recognizing that it does not appear to be highly threatening due to the expectation that the expense could be sharply reduced (or eliminated) relatively quickly if necessary.

Action: The Board accepts the recommendation indicating that it, of course, will do this. It must be mentioned that there is a difference between a program that materially threatens the long-term viability of the Association and a project that operates at a deficit. There are many examples of the latter over the years with education being just one example.

* * *

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

Survey Questions and Responses
Governance Review Committee Report for Fiscal Year 2001

The following is a list of the questions that the committee will ask you to respond to during your in-person interview. Please note your preliminary responses on this form with the understanding that you will have the opportunity to ask for clarification and to expand on your responses. In addition, you will be invited to comment on any topic that you feel is relevant at any point. All responses are confidential.

QUESTIONS ON THE BOARD/MANGEMENT 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? Feel free to add comments as well:
 - a. Initiating policy rather than reacting to staff initiatives? 4.4
 - b. Monitoring future trends? 4.4
 - c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes? 5.7
 - d. Maintaining internal discipline on matters such as attendance, preparation, communications? 6.0
 - e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and Policy Manual? 5.5
 - f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost? 6.3
 - g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority? 5.6
 - h. Assuring that the performance of the Executive Director is consistent with the Board's desires and expectations? 5.7
 - i. Revising as appropriate the ABA's end policies and strategic plan within the last year? 6.3
 - j. Reviewing the Executive Director's perfor-

mance as outlined in the Policy Manual during the month of July? 6.0

- k. Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point? 7.0
 - l. Using the chairperson as a two-way communication conduit with the Executive Director? 6.6
 - m. Avoiding exercise of individual authority except when explicitly board-authorized? 6.8
 - n. Directing only the CEO regarding operational achievement and conduct, rather than any other members of management? 6.8
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? 6.5
 - b. Working effectively with the Board as an interface between the Board and the ABA's staff? 6.8
 - 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) All no
2. Have Board members failed to absent themselves as appropriate if any unavoidable conflict of interest

arises? (Y/N)..... All no

3. Has any Board member used their position to obtain employment for themselves, family members, or close associates? (Y/N) All no
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) 1 yes (Powell's vs. booksense.com)
5. If the answer to any of the above is yes, please provide details.

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?.....2 yes – booksense.com
2. If the answer to question two 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?..... 2 yes

QUESTIONS ON THE EFFECTIVENESS OF THE GOVERNANCE REVIEW COMMITTEE

This is the second year that the Governance Review Committee has met with ABA members, Board members, and management. Following last year's meetings, the Committee made a number of recommendations for the Board's consideration. On a seven point scale (7 is high), how effective do you feel the following recommendations from last year have been? (The following list is a summary of those of last year's recommendations that the Board accepted or did not decline). Feel free to add comments as well:

1. Implement a brief orientation session for new Board members that includes review of both the ABA's governance design, and of con-

flict-of-interest procedures. 6.9

2. Include a periodic discussion of governance mechanisms and policy matters in the Board's annual agenda, presumably drawing on the Governance Review Committee's annual report. Ask the Vice President/Secretary (as the documenter of Board actions) to be responsible for ensuring that any resulting changes are properly documented in the Policy Manual or elsewhere as appropriate 6.2
3. Include a more specific Board attendance policy in the Policy Manual that recognizes both the existence of inevitable scheduling problems and the importance of consistent Board attendance given the Board's small size 6.8
4. Include a more specific description of the Governance Review Committee's objectives and methodology in the Policy Manual. 7.0
5. Consider increased use of ad hoc task forces, particularly for matters of significant financial importance or complexity 5.5
6. Update the conflict-of-interest forms for all Board and senior management members, and disseminate and discuss the completed forms to the Board and senior management 6.0
7. Review the use of "cells" for environmental scanning, and consider supplementing or replacing this source of input to the Strategic Planning Committee with a brief overall annual review by staff of changes within the six future areas, and in-depth reports on any areas where significant developments have occurred. 2.5
8. Work with General Counsel or some other independent expert to evaluate cost/benefit scenarios for future advocacy allowing for the possibility of a victory, a defeat, or a mixed decision in the pending suit 7.0
9. In general, continue regular review of costs and benefits related to all major initiatives and programs of the organization. 6.8

* * *

Thank you for your participation. Are there any topics that you feel that we should have covered that we have not had a chance to speak about?

Governance Review Committee Report for Fiscal Year 2002

April 29, 2003

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 AND ACTIONS TAKEN

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

Action: 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

Action: 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

Action: 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

Action: 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.

Action: 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

Survey Questions and Responses
 ABA Governance Committee Questionnaire – Fiscal Year 2002

Please respond to the following questions regarding governance issues during ABA’s fiscal year 2002 (11/01-10/02). 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/MANGEMENT
 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.

Governance Review Committee Report for Fiscal Year 2003

This letter provides a report from the ABA Governance Review Committee covering fiscal year 2003. The report has three sections:

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

Given that the Governance Committee has now been in existence for some while this report provides somewhat less background than in prior years, and focuses primarily on the committee's findings and recommendations. Please note that this report will only become final after the Chair has completed two outstanding items noted below as pending—speaking with the Auditor and reviewing the Auditor's opinion letter. If there is no further correspondence from the committee prior to the February Board meeting the Board may assume that the above activities have taken place and have not changed any of the following report.

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.

In keeping with the decision made in 2002 to streamline alternate year committee proceedings, the committee's used full-blown in-person interviews this year since last year the committee did not meet in person and most interviews were conducted by mail, phone, or by a single committee member. Specifically, this year the committee undertook the following:

1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with two current Board members, four staff members, and two BAC members:

- Ann Christophersen, President
- Mitchell Kaplan, Vice President and Secretary
- Avin Domnitz, Chief Executive Officer
- Oren Teicher, Chief Operating Officer
- Ellie Chang, Chief Financial Officer
- Len Vlahos, Director of Booksense.com
- Barb Wieser, BAC member
- Linda Ramsdale, BAC member

1. Structured mail interviews with two other board members:

- Karl Pohrt
- Carla Jimenez

2. Discussions with the ABA's lead Auditor, Charlene Laniewski, KPMG (pending)

3. The financial Auditor's opinion letter for fiscal year 2003 (pending)

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 that the several year trend of steady improvements continues, with the result that the ABA's governance mechanisms appear to be working very well. 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. These include the following:

- Several respondents remarked on how much the effectiveness of the Board, and its relationship with staff, have grown in recent years as the new governance model has settled into place
- For the first time the committee asked respondents to rate the two-year trend for each item. There were no "down" trend ratings reported: in other words every respondent felt that performance on the matters in question were flat or improving, and most of those that were flat were already rated at very high levels of performance
- Substantial progress was noted by virtually all respondents on four of the five items recommended in last year's committee report (including Board members at BAC meetings, improving communications between the BAC and Board, improving Board effectiveness in long-range environmental planning, and monitoring the progress of booksense.com). The fifth item (refining the nomination process) was generally described as improving but still partially in development
- No conflict of interest or issues of materiality were cited, and Board preparation and discipline were reported to be high

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

1. After several years of successful modifications that have increased BAC input to the Board, several respondents raised the question of how to close the loop and provide Board feedback to the BAC. The feedback would follow up on the BAC's prior suggestions and would allow the Board to request the BAC to consider new issues when appropriate
2. After three years of very low scores, the Board's efforts to monitor future trends and to initiate policy rather than react to staff initiatives fared considerably better than in the past. Respondents also noted that ratings of both issues have trended upward. At the same time, several respondents expressed interest in approaches that would continue the upward trend, noting that there is still room for improvement
3. Last year's recommendations that the Board provide more specific input to the nominating committee resulted in a self-assessment by Board members of their collective strengths and weaknesses. With that as background, several respondents noted that the question of how the committee uses that information is yet to be determined, and that the bylaws may limit

the committee's inclination to seek substantial Board input on what mix of skills is most needed to enhance the current Board's effectiveness

4. The question was raised of whether it is possible and desirable to keep interested Board members up to date on current issues between Board meetings. One idea was that the current regularly-scheduled calls between the CEO and the Board President could result in occasional brief emails from the President to fellow Board members providing a short overview of current issues
5. Finally, the Governance Committee found that meeting with several BAC members was extremely helpful given the importance of the BAC in the governance process, and would like to suggest that it do so again next year to follow up on this year's findings and recommendations

RESULTING RECOMMENDATIONS

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

1. Consider asking the President and/or Vice President to act as a formal liaison between the BAC and the Board: Have each BAC meeting close with a request by the President or Vice President for a list of topics that the BAC would like presented to the Board; and have each BAC meeting begin with a report by the President or Vice President of responses from the Board, any requests from the Board to consider specific issues, and a request that the BAC members keep track of issues that they would like the Board to consider so that the BAC can create a collective list at the end of the meeting

Action: Accepted. The President and the CEO will refine and suggest a procedure to the Board for implementation at the BEA meeting of the Bookseller Advisory Council.

2. Continue scenario planning efforts at Board meetings by examining important topics at each meeting. Emphasize issues where policy creation is desirable given a possibility of long-term change. If the sessions continue to be successful consider building internal staff capability to undertake the preparation work needed for the Board's deliberations, and alter the relevant sections of the Policy Manual to reflect these changes

Action: Accepted in principle with the proviso that budget considerations and the demands upon staff ultimately will determine what is possible at a given point in time.

3. Monitor the effectiveness of this year's Nominating Committee process, and if appropriate consider changes to the By Laws that would explicitly encourage the committee to use Board input to ensure that the Board maintain continuous representation of needed technical skills (e.g.,

finance) as well as continuous representation of various membership categories

Action: The Board will certainly monitor the effectiveness of this year's Nominating Committee process, but feels that the way to ensure and maintain the use of Board input for the various purposes mentioned is by a small modification of the ABA nominations and Election Guidelines specifically mentioning that the committee shall seek appropriate input from the Board of Directors. The modification would be made to the second paragraph of the first section of the Guidelines.

4. Consider making regularly-scheduled (e.g., weekly or bi-weekly) contact between the President and the CEO a normal activity, and request that the President keep other Board members briefly updated on current topics (for example, with brief emails)

Action: Accepted with the qualification that the e-mails could come from either the President, CEO, or COO at any particular time.

5. Consider formalizing the previously experimental alterations to the process used by the Governance Committee by changing the Policy Manual to reflect the following:

- a. Appoint members to a two-year (rather than one-year) term
- b. Formalize the process of conducting limited reviews in odd-numbered years
- c. 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 to provide continuity

Action: Accepted. The revised section of the policy Manual will be in place in time for the next Governance Review Committee process.

* * *

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

ABA Governance Survey Results
 ABA Governance Committee Questionnaire – Fiscal Year 2003

Please respond to the following questions regarding governance issues during ABA’s fiscal year 2003 (11/02-10/03) and either discuss your responses in an in-person interview in Miami or return your completed questionnaire by email or surface mail to the address listed at the end of the survey.

Many of the questions ask you to rate a statement on a 7 point scale where 7 is high. The questions also ask you to describe the trend over the past two years with regard to the question’s subject using U (up); D (down); or F (flat). If you do not have an opinion on any question, please enter "NA". Feel free to add comments at the end of this survey. 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 currently accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]?

	Current	2-year trend	U	F	D	N/A
a. Initiating policy rather than reacting to staff initiatives?	5	___	5	4	0	1
b. Monitoring future trends?	5.8	___	9	0	0	1
c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes?	5.8	___	6	2	0	2
d. Maintaining internal discipline on matters such as attendance, preparation, and communications?	6.3	___	5	2	0	3
e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and Policy Manual?	5.9	___	7	0	0	3
f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost?	5.5	___	2	5	0	3
g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority?	6.9	___	4	4	0	2
h. Assuring that the performance of the Executive Director is consistent with the Board’s desires and expectations?	6.4	___	6	1	0	3
i. Revising as appropriate the ABA’s end policies and strategic plan within the last year?	6.8	___	4	3	0	3
j. Reviewing the Executive Director’s performance as outlined in the Policy Manual during the month of July?	6.7	___	4	2	0	4
k. Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point?	6.4	___	7	2	0	1
l. Using the chairperson as a two-way communication conduit with the Executive Director?	5.9	___	2	4	0	4
m. Avoiding exercise of individual authority except when explicitly board-authorized?	6.8	___	4	4	0	2
n. Directing only the CEO regarding operational achievement and conduct, rather than any other members of management?	7	___	2	6	0	2

2. On a seven point scale (7 is high), how well is the CEO accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]? Feel free to add comments as well:

	Current	2-year trend	U	F	D	N/A
a. Making available to the Board sufficient information and staff work to support their obligation to make strategy and policy?	6.5	___	6	2	0	2
b. Working effectively with the Board as an interface between the Board and the ABA's staff?	6.5	___	3	4	0	3
c. Causing the staff to effectively respond to issues of importance to the Board and the membership?	6.9	___	5	4	0	1
d. Working within the boundaries of any executive limitations policies (as defined in the Policy Manual) established by the Board?	6.7	___	4	3	0	3

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.

	Y	N	N/A
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)	0	8	2
2. Have Board members failed to absent themselves as appropriate if any unavoidable conflict of interest arises? (Y/N)	0	7	3
3. Has any Board member used their position to obtain employment for themselves, family members, or close associates? (Y/N)	0	8	2
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)	0	7	3
5. If the answer to any of the above is yes, please provide details.			

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.

	Y	N	N/A
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?	4	6	0
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? (Y/N)	4	0	6

QUESTIONS REGARDING RECENT BOARD DECISIONS ON GOVERNANCE MATTERS

On a seven point scale (seven is high), how successful has the ABA been in implementing the following Board decisions regarding governance processes?

1. Including the Board President, Vice President, and possibly other Board members as observers to BAC discussions?	6.9
---	-----

- | | |
|---|-----|
| 2. Broadening and making more timely the communications between the BAC and the Board? | 5.1 |
| 3. Improving the Board's effectiveness in thinking about the potential for unexpected changes in the long-range strategic environment? | 6.6 |
| 4. Refining the Board's nomination process to include formal screens for technical skills as well as representation of various membership categories? | 5.8 |
| 5. Monitoring the progress of booksense.com to ensure that its benefits and financial impact is well understood by Board members? | 6.3 |

* * *

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 survey to:

IvanBarkhorn@redstonestrategy.com

Or: Ivan Barkhorn
Redstone Strategy Group, LLC
1542 High Street
Boulder, CO 80304

Governance Review Committee Report for Fiscal Year 2004

This letter provides a report from the ABA Governance Committee covering fiscal year 2004. The report has three sections:

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

Given that the Governance Committee has now been in existence for some while this report provides somewhat less background than in prior years, and focuses primarily on the committee's findings and recommendations. Please note that this report will only become final after a committee member has completed two outstanding items noted below as pending – speaking with the Auditor and reviewing the Auditor's opinion letter. If there is no further correspondence from the committee prior to the May Board meeting the Board may assume that the above activities have taken place and have not changed any of the following report.

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 Mary Gay Shipley (chair) and John Bennett. 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.

In keeping with the decision made in 2002 to streamline alternate year committee proceedings, the committee conducted limited interviews this year, conducted by the John Bennett. Specifically, this year the committee undertook the following:

1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with two current Board members, three staff members, and two Regional representatives:

- Mitchell Kaplan, President
- Suzanne Staubach, Vice President and Secretary
- Avin Domnitz, Chief Executive Officer
- Oren Teicher, Chief Operating Officer
- Ellie Chang, Chief Financial Officer
- Valerie Koehler, President, Mid-South
- Lisa Knudsen, Executive Director, Mountains and Plains

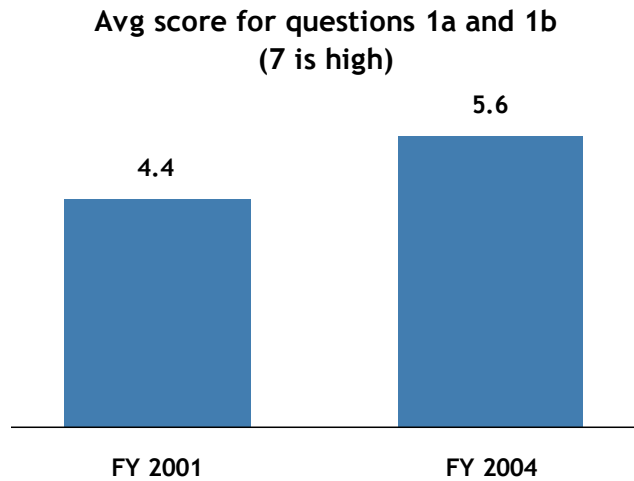
2. Discussions with the ABA's lead Auditor at KPMG (pending)
3. The financial Auditor's opinion letter for fiscal year 2004 (pending)

As noted below, the committee found that the two regional representatives were not able to respond to the specific questions on the interview guide, though they made some overall observations. Consequently, a copy of the structured interview guide, along with a summary of the interview results for the other five interviewees, is attached as Appendix A.

COMMITTEE FINDINGS

This year the committee found that the several year trend of steady improvements continues, with the result that the ABA's governance mechanisms appear to be working very well. The committee noted that 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. The trend of continued improvement is demonstrated in the analysis below, which shows increases in the average results for the past four years on questions one and two, which have traditionally had the least positive scores of any questions. This trend is reflected in the specific scores of almost every item in the survey.



Only one respondent raised a concern about a potentially material decision, wondering if the endowment investment policy rises to that level. In any event, they deemed the Board's actions with respect to the endowment investment to have been suitably prudent. Booksense.com, which had been raised as a potentially material issue in past years, was not mentioned by any respondent this year.

With that said, the committee noted several areas where minor issues were raised.

1. After years of accounting for the lowest scores on the survey, the Board's efforts to monitor future trends and to initiate policy rather than react to staff initiatives continued the trend shown in last year's improved scoring. Respondents also noted that ratings of both issues have trended upward. At the same time, respondents expressed continued interest in approaches that would continue the upward trend, noting that there is still room for improvement. In an interesting comment, one respondent said, "Because of the nature of our Board [comprised of professional booksellers with major professional commitments outside of the Board] we may never get above a 5 or 6 on these issues, but we should continue to try to get to 7"
2. Discussion of the procedures used to manage potential conflicts of interest resulted in a sense that some refinements may be warranted. At the same time there was no indication of any specific current practical issues in this area

3. As noted above, the interviews with regional representatives were not a source of much input to the governance process
4. Finally, given continued improvements in the association's performance against governance standards, there may be potential to streamline the process without losing effectiveness

RESULTING RECOMMENDATIONS

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

1. Continue scenario planning efforts at Board meetings by examining important topics at each meeting. Emphasize issues where there is possibility of improving the position of booksellers over the long-term change. Consider diverse approaches to this planning, including use of speakers, brainstorming, and various consultants if the Board thinks additional tools might improve their ability to understand and address long-term issues

Agreed and Accepted. Both the staff and the Board of Directors are committed to the striving for constant improvement in the difficult area

2. Institute somewhat more formal conflict of interest procedures that meet widely-accepted standards by implementing one or both of the following two actions:

- Formalize the procedure of annually sharing the Board and CEO (and by extension the staff) conflict of interest declarations with the entire Board and require that the topic be on the Board's agenda for discussion at least once each year. This would be because there is no provision in Sections 5 and 8 of the Policy Manual for review of potential conflicts of the President or the CEO. (If a Board member requests an independent review for reasons of confidentiality that request would be declared in lieu of general sharing of their conflict of interest declaration)

Agreed and accepted. This item will appear annually on the summer Board meeting agenda.

- While not a recommendation, we also raise the possibility that either corporate counsel or an independent committee (could potentially be the governance committee) review the annual Board member and CEO (and by extension the staff) conflict of interest declarations with the ability in exceptional cases to make recommendations to the Board for treatment beyond that dictated in the ByLaws and Policy Manual. We recognize that this would be likely to arise rarely if ever, and

only if there are any declared conflicts of interest that pose quite unusual issues. At the same time, we suggest that the degree of independence from a review independent of the Board may be desirable, and in any event that the Board should discuss such an approach

The Board will consider this approach after trying to institutionalize the suggestion above and evaluating its effectiveness

3. Given the lack of direct knowledge of Board and staff governance issues by regional Presidents and Executive Directors, and in view of their annual joint meeting with the ABA Board and staff, consider eliminating the interviews of regional representatives by the Governance Committee

Agreed and accepted

4. Consider formalizing the previously experimental alterations to the process used by the Governance Committee by changing the *ByLaws* and the *Policy Manual* to reflect the following:

- Appoint members to a two- or three-session (rather than one-year) term as appropriate
- Formalize the process of conducting limited reviews in odd-numbered sessions
- Allow the frequency of sessions to range from 12 to 24 months at the discretion of the committee

Accepted in that that there is agreement that the process needs to be streamlined, however, the Board feels there is no need to go through a Bylaws change to accomplish the desired end... ie...reappoint each year, formalize the limited review process, and having the Committee Chair, in consultation with the President and the CEO designate the review times. The Board does agree that these sorts of adjustments should be included in the Policy Manual.

* * *

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.

The Board would like to thank the Committee for their help in this valuable function.

APPENDIX A

ABA Governance Survey Results

ABA Governance Committee Questionnaire – Fiscal Year 2004

Please respond to the following questions regarding governance issues during ABA’s fiscal year 2004 (11/03-10/04) and discuss your responses in an in-person interview in Austin.

Many of the questions ask you to rate a statement on a 7 point scale where 7 is high. The questions also ask you to describe the trend over the past two years with regard to the question’s subject using U (up); D (down); or F (flat). If you do not have an opinion on any question, please enter “NA”. Feel free to add comments at the end of this survey. 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 currently accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]?

	Current	2-year trend	U	F	D	N/A
a. Initiating policy rather than reacting to staff initiatives?	5.6	___	4	1	0	0
b. Monitoring future trends?	5.6	___	4	1	0	0
c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes?	5.6	___	5	0	0	0
d. Maintaining internal discipline on matters such as attendance, preparation, and communications?	6.2	___	2	3	0	0
e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and Policy Manual?	6.4	___	3	2	0	0
f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost?	6.4	___	3	2	0	0
g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority?	6.6	___	2	3	0	0
h. Assuring that the performance of the Executive Director is consistent with the Board’s desires and expectations?	6.5	___	2	2	0	1
i. Revising as appropriate the ABA’s end policies and strategic plan within the last year?	6.6	___	2	3	0	0
j. Reviewing the Executive Director’s performance as outlined in the <i>Policy Manual</i> during the month of July?	7.0	___	1	3	0	1
k. Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point?	6.8	___	3	2	0	0
l. Using the chairperson as a two-way communication conduit with the Executive Director?	6.2	___	1	4	0	0
m. Avoiding exercise of individual authority except when explicitly board-authorized?	6.8	___	0	5	0	0
n. Directing only the CEO regarding operational achievement and conduct, rather than any other members of management?	6.8	___	0	5	0	0

2. On a seven point scale (7 is high), how well is the CEO accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]? Feel free to add comments as well:

	Current	2-year trend	U	F	D	N/A
a. Making available to the Board sufficient information and staff work to support their obligation to make strategy and policy?	6.8	___	2	3	0	0
b. Working effectively with the Board as an interface between the Board and the ABA's staff?	6.8	___	1	4	0	0
c. Causing the staff to effectively respond to issues of importance to the Board and the membership?	6.4	___	1	4	0	0
d. Working within the boundaries of any <i>executive limitations policies</i> (as defined in the <i>Policy Manual</i>) established by the Board?	7.0	___	1	4	0	0

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.

	Y	N	N/A
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)	0	8	0
2. Have Board members failed to absent themselves as appropriate if any unavoidable conflict of interest arises? (Y/N)	0	5	0
3. Has any Board member used their position to obtain employment for themselves, family members, or close associates? (Y/N)	0	5	0
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)	0	5	0
5. If the answer to any of the above is yes, please provide details.			

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.

	Y	N	N/A
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?	1	4	0
Decisions about the endowment investment was mentioned by one interviewee			
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? (Y/N)	1	0	4

QUESTIONS REGARDING RECENT BOARD DECISIONS ON GOVERNANCE MATTERS

On a seven point scale (seven is high), how successful has the ABA been in implementing the following Board decisions regarding governance processes?

1. Including the Board President, Vice President, and possibly other Board members as observers to BAC discussions?	7
2. Broadening and making more timely the communications between the BAC and the Board?	6.6
3. Improving the Board's effectiveness in thinking about the potential for unexpected changes	

in the long-range strategic environment?	5.5
4. Refining the Board’s nomination process to include formal screens for technical skills as well as representation of various membership categories?	5.5
5. Monitoring the progress of booksense.com to ensure that its benefits and financial impact is well understood by Board members?	6.3

* * *

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: _____

Governance Review Committee Report for Fiscal Year 2005

This letter provides a report from the ABA Governance Committee covering fiscal year 2005. The report has three sections:

1. Committee objectives and methodology
2. Committee findings
3. Resulting 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 an Audit 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 Audit Committee’s term is one year.”

The members of this year’s committee are Mary Gay Shipley (Chair), John Bennett, and Betsy Burton. The committee’s function is described 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.

In keeping with the decision made in FY 2003 to streamline alternate year committee proceedings, FY 2005 is a ‘full’ year involving a substantial set of in-person interviews. Specifically, this year the committee undertook the

following:

1. Structured confidential, in-person interviews based on the ABA Policy Manual and Bylaws with five current Board members, one former Board member, four staff members, and three BAC members:
 - Mitchell Kaplan, President
 - Russ Lawrence, Vice President/Secretary
 - Collette Morgan, Board member
 - Cathy Langer, Board member
 - Suzanne Staubach, Board member
 - Chuck Robinson, former Board member
 - Avin Domnitz, Chief Executive Officer
 - Oren Teicher, Chief Operating Officer
 - Eleanor Chang, Chief Financial Officer
 - David Walker, Director of Special Projects
 - Fran Kielty, BAC member
 - Phillip Rafshoon, BAC member
 - Lance Fensterman, BAC member
2. Discussions with the ABA’s lead Auditor, Charlene Laniewski, KPMG and LIBRIS lead auditor, Ian Johnson of Grant Thornton.
3. Review to ensure that the financial Auditors’ opinion letters for fiscal year 2005 give an opinion with no qualifications

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 that the several year trend of steady improvements in governance ratings continues although the rate of improvement is leveling off as the policies and practices near maximum ratings. Overall, the result is that the ABA’s governance mechanisms appear to be working very well.

The committee noted that in general, satisfaction with governance performance continued high among both the Board and staff. In addition, although several issues had been raised by the Board in response to specific member concerns, the committee found that these issues can be addressed with modest *Policy Manual* adjustments as described in the recommendations section.

No questions received significantly lower ratings than in past years, and several elements of ABA's larger governance scheme seem to have achieved new highs in effectiveness over the past year. These include the following:

- Several respondents remarked on how overall governance of the Board and ABA is reaching the practical limit of effectiveness, although everyone agrees that there is always room for finely adjusted improvements
- Similarly, for the second year, the committee asked respondents to rate the two-year trend for each item. Ratings were quite similar to the previous year, with no "down" trend ratings reported, flat-rated trends were already highly scored, and questions that saw a deceleration in their upward trend had reached new highs
- Through significant improvements in monitoring future trends, many respondents noted and scored highly how the Board has improved its ability to initiate policy - particularly through the use of extended bodies such as the BAC - rather than simply reacting to staff initiatives,
- Most of the 'ten questions' that were reviewed at the Board's request were deemed not to have associated governance issues. A fairly representative example was the review of the process used in the sale of the Tarrytown property. Close questioning by the committee resulted in a clear conclusion that: a) a thorough and logical process was followed; and b) it is not appropriate to make that process into an ABA policy since the occasion to use such a policy would be so rare
- No conflicts of interest were cited
- The only issue of potential materiality mentioned was the increasing liability built up by the gift card program, but all interviewees felt that the Board and staff are applying prudent business judgment to monitor and manage this issue

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

- Interviewees believed that the membership is interested in formalization of the increased transparency and public disclosure from the ABA Board regarding ABA financial information
- Several interviewees commented that the language in the Policy Manual that implies that the Board should initiate policy rather than relying on staff may not match perfectly with the institutional mechanisms that have evolved as the ABA's governance process has matured. Specifically, the language does not seem to

take into account the important role that 'extensions' of the Board such as the BAC and forums play in establishing new policy ideas

- Interviewees believed that the membership is interested in formalization of the careful - but somewhat *ad hoc* - processes followed by the Board in establishing the CEO contract and salary
- In addition, several interviewees recommended that heightened transparency be considered with regard to the results of the Board's contractual negotiations with future CEOs
- Concern was raised by several interviewees that an association member can unreasonably dominate Board member and staff time unless it is formally understood that the President can politely terminate responses to redundant inquiries after due process has been followed
- Several interviewees mentioned that declining membership is an important issues for the Board to address and that in particular, the definition of 'core' membership is a specific limiting factor
- Although interviewees noted continued improvements in monitoring future trends, the idea was raised of capitalizing on younger booksellers with the expectation of long association with bookselling to help in determining how to respond to trends in readership and the future conditions of bookselling that are greater than five years out
- Board members reiterated their desire to be updated on current issues between Board meetings. One idea was that the current regularly-scheduled calls between the CEO and the Board President should be followed by brief emails from the President to fellow Board members providing a short overview of current issues
- It was noted that the gift card liability is approaching materiality due to its success in a way that may not have been fully anticipated when the gift card program was originally approved
- Governance committee members would like to have the *Policy Manual* (and ultimately the Bylaws) changed to accurately reflect the purpose and term of the committee
- Finally, although the Governance Committee found that meeting with several BAC members was extremely helpful given the importance of the BAC in the governance process, the current practice of using the governance survey for all interviewees proved to be relatively inefficient with interviewees who are unable to answer the majority of the questions due to lack of context

RESULTING RECOMMENDATIONS

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

1. Amend pertinent sections of the *Policy Manual* to formally require the ABA to post three years of financials on bookweb.org in a highly visible location, or with a highly visible link.

Recommendation accepted with implementation to begin immediately.

2. Amend the language in the *Policy Manual* that suggests that “the Board should initiate policy rather than reacting to staff initiatives” with the following language: “the Board in conjunction with the bodies established to provide membership input (such as the BAC and various forums), should play an active role in the development of policy in conjunction with staff”

Recommendation accepted with implementation to begin immediately.

3. Amend pertinent sections of the *Policy Manual* to formalize the CEO contract and salary negotiation process using the steps established informally in the previous three rounds of negotiations including, but not limited to:

- a. Establishing a Board negotiation committee
- b. Using independent, third-party analysis of benchmark executive total compensation in non-profit associations that are similar to the ABA
- c. Instituting a Board vote to finalize the contract
- d. Announcing to the membership in *BTW* that a CEO has been hired and for what term

Recommendation accepted with implementation to begin immediately.

4. Consider posting the newly formalized policy in *BTW* and elsewhere, and when the next CEO contract is written, consider posting the results of the contract negotiations at the close of the process.

Recommendation accepted with implementation to begin immediately.

5. Discuss a potential policy for how to handle repeated ABA member inquiries that have reached an unproductive level from a staff and Board standpoint and have been dealt with thoroughly. The idea was raised to give the Board President formal discretion to end further communications in such a situation.

The Board recognizes the possibility of a member’s individual inquiries reaching a point where any further discussion would be non-productive. It is important to reemphasize that the Board and staff of the ABA believes that all members should be treated with respect and courtesy while acknowledging that there are situations when parties need to “agree to disagree” on a given issue. The Board further feels that there is no specific written policy required to deal with these situations as the ability to disengage is implicate in the President’s role as chief spokesperson for the organization.

6. Review the definition of a “core” member as a means to stem declining membership.

The recommendation is accepted with the further comment that the Strategic Planning Committee and the Board review this definition each year when going through the strategic planning process. In preparation for the new five year plan (10-1-07), the Booksellers Advisory Council will be asked to weigh in on the issue of who is a core member of ABA.

7. Establish, as an experiment, an *ad hoc* ‘council’ to work on long-term trends that consists of booksellers who are committed to being in the business for at least 10 to 15 years. These booksellers would be joined by a staff representative, and a Board representative, to meet twice a year and report to the board on long-term issues facing the bookselling industry and recommended actions to be considered. This council should have the ability to invite knowledgeable outsiders to participate in its deliberations as appropriate.

The spirit of this recommendation is accepted and the Board will act on it with all due speed. The Board has recognized, and the Governance Review Committee has pointed out, that the issue of longer-term environmental scanning remains an issue for ABA. The proposal for an “ad hoc” council to engage in the process is a good one, however the Board feels that the council should be comprised of some balance between “emerging” booksellers and some more seasoned participants. The Board will be discussing this proposal in some detail at the September, 2006 Board meeting.

8. Request that the President keep other Board members briefly updated on current topics (for example, with brief emails at least once each month) after the weekly call with the CEO.

Recommendation accepted with implementation to begin immediately.

9. Require financial analysis that includes a ten-year worst case for programs and actions submitted for Board approval that could reach 'material' status (e.g., the gift card program).

Recommendation accepted with implementation to begin immediately and a report to be presented no later than the September, 2006 Board meeting.

10. Amend the *ABA Policy Manual* to update the section describing the Governance Review Committee and how it conducts its process as follows:

The Board shall appoint a Governance Committee constituted of three Bookstore Members, none of whom is a member of the Board, but one of whom is a previous Officer (member of the Board), to review annually the Association, Board and Officers' practices with respect to whether the relationship between the Board and senior management is functioning according to these Bylaws and any other policies and procedures adopted by the Board. The Governance Committee shall also supervise resolution of any issues where the Board or the Association staff has a conflict of interest. The Governance Committee shall also provide oversight if there is a material question as to whether the board is carrying out its fiduciary responsibility. However, such oversight shall be undertaken only in the event there is no reasonable doubt that the Board has failed to carry out its fiduciary responsibility. The Governance Committee may in its sole discretion elect in the year following a full Committee review to have the review undertaken only by the Chairman of the Governance Committee. The members of the Governance Committee shall serve for a two year term provided that the Chairman of the Committee shall be in the second year of his or her term and shall then continue for a third year on the Committee to maintain continuity.

Recommendation accepted with implementation to begin immediately.

11. Create a separate interview guide for Governance Committee interviewees (such as BAC members) who are not intimate with the details of ABA governance but can provide valuable input on governance-related issues.

Recommendation accepted with implementation to begin immediately.

* * *

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.

Please respond to the following questions regarding governance issues during ABA's fiscal year 2005 (11/04-10/05) and discuss your responses in an in-person interview in Long Beach.

Many of the questions ask you to rate a statement on a 7 point scale where 7 is high. The questions also ask you to describe the trend over the past two years with regard to the question's subject using U (up); D (down); or F (flat). If you do not have an opinion on any question, please enter "NA". Feel free to add comments at the end of this survey. Thank you in advance for your help.

APPENDIX A

ABA Governance Survey Results
 ABA Governance Committee Questionnaire – Fiscal Year 2005

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 currently accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]?

	Current	2-year trend
a. Initiating policy rather than reacting to staff initiatives?	5.7	0.9
b. Monitoring future trends?	5.7	0.9
c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes?	5.9	0.8
d. Maintaining internal discipline on matters such as attendance, preparation, and communications?	6.3	0.2
e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and Policy Manual?	6.3	0.8
f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost?	6.3	0.7
g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority?	6.5	0.5
h. Assuring that the performance of the Executive Director is consistent with the Board's desires and expectations?	6.8	0.8
i. Revising as appropriate the ABA's end policies and strategic plan within the last year?	6.4	0.7
j. Reviewing the Executive Director's performance as outlined in the <i>Policy Manual</i> during the month of July?	6.6	0.7
k. Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point?	6.8	0.7
l. Using the chairperson as a two-way communication conduit with the Executive Director?	6.3	0.6
m. Avoiding exercise of individual authority except when explicitly board-authorized?	6.9	0.5
n. Directing only the CEO regarding operational achievement and conduct, rather than any other members of management?	6.7	0.6

2. On a seven point scale (7 is high), how well is the CEO accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]? Feel free to add comments as well:

	Current	2-year trend
a. Making available to the Board sufficient information and staff work to support their obligation to make strategy and policy?	6.7	0.6
b. Working effectively with the Board as an interface between the Board and the ABA's staff?	6.7	0.6
c. Causing the staff to effectively respond to issues of importance to the Board and the membership?	6.7	0.6
d. Working within the boundaries of any <i>executive limitations policies</i> (as defined in the <i>Policy Manual</i>) established by the Board?	6.7	0.5

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) | 0 |
| 2. Have Board members failed to absent themselves as appropriate if any unavoidable conflict of interest arises? (Y/N) | 0 |
| 3. Has any Board member used their position to obtain employment for themselves, family members, or close associates? (Y/N) | 0 |
| 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) | 0 |
| 5. If the answer to any of the above is yes, please provide details. | |

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?

The Gift Card liability	0.4
-------------------------	-----

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? (Y/N)

1

QUESTIONS REGARDING RECENT BOARD DECISIONS ON GOVERNANCE MATTERS

On a seven point scale (seven is high), how successful has the ABA been in implementing the following Board decisions regarding governance processes?

- | | |
|---|-----|
| 1. Board responses to ABA member inquiries? | 5.4 |
| 2. The organization's adherence to governing documents? | 6.5 |
| 3. Making financial information available to the membership? | 5.8 |
| 4. The Board's decision making during the sale of the ABA's property in Tarrytown? | 6.5 |
| 5. Board procedures for the renewal of the CEO's contract? | 6.3 |
| 6. Board procedures for arriving at, and negotiating executive salaries? | 6.2 |
| 7. Supporting an open environment for Board deliberations? | 6.6 |
| 8. Board procedures for relations with the financial auditor? | 6.6 |
| 9. The organization's efforts to grow membership? | 5.1 |
| 10. Ensuring a thorough governance review process, and following up on Governance Review Committee recommendations? | 6.8 |

* * *

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: _____

ABA Audit Committee Guidelines

(As Approved by the ABA Board of Directors, on September 18, 2006)

The Audit Committee will assist the Board of Directors in fulfilling its oversight responsibilities for the financial reporting process, the system of internal control, the audit process and the Association's process for monitoring compliance with financial, tax and accounting laws and regulations. The Audit Committee has authority to conduct or authorize investigations into any matters within its scope of responsibility.

Scope of Responsibility

The Audit Committee will have the following responsibilities:

- (1) Oversee the integrity of the financial accounting process and system of internal controls regarding finance, accounting and use of assets
- (2) Oversee the independence and performance of the outside auditors and staff with finance responsibilities, meet at least annually with the outside auditors, and recommend to the Board the selection, retention, or termination of the Association's outside auditors;
- (3) Oversee the operation of the policies on conflicts of interest and the Association's board-staff communications;
- (4) Review the effectiveness of the system for monitoring compliance with financial, tax and accounting laws and regulations and the results of management's investigation and follow-up (including disciplinary action) of any instances of noncompliance;
- (5) Obtain regular updates from management and legal counsel regarding financial, tax and accounting compliance matters;
- (6) Oversee the policies and procedures for encouraging "whistleblowers" to report questionable accounting or auditing issues associated with organizational financial practices, and recommend to the Board any changes to ensure those policies and procedures are effective;
- (7) Regularly report to the Board of directors about Audit Committee activities, issues, and related recommendations; and
- (8) Subject to specific authorization from the Board, arrange for and monitor special financial, tax and/or accounting investigations, as needed.

Committee Membership

The Audit Committee will consist of no less than three, but no more than five persons, at least one of whom should be an elected member of the board of directors, and all of whom shall be appointed by the President of the board.

Committee members must be (i) independent of the management of the Association (including its related organizations) and (ii) free of any financial or personal relationship that would impair such independence.

A majority of Committee members shall be financially literate and, if possible at least one member shall be a financial expert. Financial literacy is defined as being able to read and understand fundamental financial statements. Financial expert means a person who has one or more of the following: (i) an understanding of generally accepted accounting principles related to not-for-profit organizations and the related financial statement and disclosures, (ii) experience applying such principles, (iii) experience preparing or auditing financial statements, (iv) experience with internal controls; or (v) an understanding of audit committee functions. If the Committee deems it appropriate, the Committee can seek the approval of the Board to hire an independent accountant as a consultant to the Committee to assist in the assessment and analysis of financial, tax and accounting documents and issues.

Committee Process

The Audit Committee shall meet at least three times each year, including at least: (1) in person, before the audit commences to consider planning and preparing for the audit, information and control systems; (2) between completion of the audit and the annual meeting to cover functional matters; and (3) to provide a report in a meeting with the Board of Directors. At least one of the meetings of the Audit Committee shall be in a separate executive session with the independent auditor to provide the opportunity for full and frank discussion without members of senior management present.

ABA Executive Limitations Policies

Section I: Overall Executive Restraint

The CEO shall not cause or allow any practice, activity, decision or organizational circumstance that is either unlawful, imprudent or in violation of commonly accepted business and professional ethics.

Section II: Treatment of Members and Customers

With respect to interactions with members or customers, or those applying to be members or customers, the chief executive officer shall not cause or allow conditions, procedures or decisions that are unsafe, undignified, unnecessarily intrusive, or that fail to provide appropriate confidentiality or privacy. Accordingly, he or she shall not:

1. Use application forms that elicit information for which there is no clear necessity.
2. Use methods of collecting, reviewing, transmitting or storing member or customer information that fail to protect against improper access to the material elicited.
3. Fail to establish with members and customers a clear understating of what may be expected and what may not be expected from the service offered.
4. Fail to inform members and customers of this policy, or to provide a grievance process to those who believe they have not been accorded a reasonable interpretation of their rights under this policy.

Section III: Treatment of Staff

With respect to treatment of paid and unpaid volunteer staff, the CEO may not cause or allow conditions that are unfair or undignified. Accordingly, he or she may not:

1. Operate without written personnel policies that clarify personnel rules for staff, provide for effective handling of grievances and protect against wrongful conditions such as nepotism and grossly preferential treatment for personal reasons.
2. Prevent staff from presenting a grievance to the board or the audit committee when (1) internal grievance procedures have been exhausted and (2) the employee alleges either that (a) board policy has been violated to his or her detriment or (b) board policy does not adequately protect his or her human rights.
3. Fail to acquaint staff with their rights under this policy.

Section IV: Financial Planning and Budgeting

Financial planning for any fiscal year or the remaining part of any fiscal year shall not risk fiscal jeopardy or deviate materially from the board's priorities as expressed in the approved objectives and timetables for that year as stated in the strategic plan. Accordingly, the CEO shall not allow budgeting that:

1. Contains information too limited to enable credible projections of revenue and expenses, separation of capital and operational items, cash flows and disclosure of planning assumptions.
2. Fails to meet agreed upon schedules when providing timely financial reports to the board.

Section V: Financial Condition and Activities

With respect to the actual, ongoing financial condition and activities of the Association, the CEO shall not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from board priorities established in the strategic plan. Accordingly, the CEO shall not:

1. Expend more funds than have been approved by the board.
2. Financially obligate the Association for an amount greater than can be repaid.
3. Violate the Investment Policy guidelines.
4. Fail to settle payroll and government obligations, such as tax payments in a timely manner.
5. Acquire, encumber or dispose of real property without board approval.

Section VI: Emergency CEO Succession

In order to protect the board from the sudden loss of the services of the CEO, the CEO may have no fewer than two other executives familiar with board and CEO issues and processes.

Section VII: Asset Protection

The CEO shall not allow the asset of the Association to be unprotected, inadequately maintained, or unnecessarily risked. Accordingly, he or she may not:

1. Fail to ensure against theft and casualty losses.
2. Allow unbonded personnel access to material amounts of funds.

3. Unnecessarily expose the Association, its board or staff to claims of liability.
4. Make any purchase **which results in conflict of interest.**
5. Fail to protect intellectual property, information and files from loss or significant damage.
6. Receive, process or disburse funds that are insufficient to meet the board-appointed auditor's standards.

Section VIII: Compensation and Benefits

With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the CEO shall not cause or allow jeopardy to fiscal integrity or public reputation of the Association. Accordingly, he or she may not:

1. Change his or her own compensation or benefits.
2. Promise or imply permanent or guaranteed employment.
3. Establish current compensation and benefits that deviate materially from the geographic or professional market for the skills employed.
4. Create compensation obligations over a longer term than revenues can be safely projected.
5. Establish or change pension benefits so as to cause unpredictable or inequitable situations, including those that
 - a. Incur unfunded liabilities.
 - b. Treat the CEO differently from other key employees.

ABA Nomination and Election Guidelines

(As Approved by the ABA Board of Directors, July 2002)

Selection of the Nominating Committee

The President, with the approval of the Board of Directors, will appoint members of the Nominating Committee. The Committee shall be broadly representative and shall be composed of active ABA members. The Nominating Committee shall be chaired by a member of the Board of Directors who is not a candidate for office, and it is desirable that the Chair shall have previously served on the Nominating Committee. He/she shall serve as liaison between the Committee and the Board. The Committee shall consist of five bookstore members, three of whom are not members of the Board.

Each year, the Nominating Committee will review the strategic plan and seek appropriate input from bookseller members, staff, and others to determine the leadership qualities, talents, expertise, and representation that will be needed to implement the strategic plan for the ensuing three years. The Board will fill out a self-evaluation form in advance of their summer meeting so that during a full discussion the strength and weaknesses of the Board can be assessed and a clear profile of desirable candidates developed. The Nominating Committee will then develop, and use as guidelines, those profiles of candidates that will be sought to fill the current vacancies. The profiles shall include, but not be limited to, the qualifications outlined below. It is the responsibility of the Nominating Committee to seek nominees that meet the Board's profile, making sure the Committee has adequate information on each nominee before the Committee meets to make their selection. If a conflict of interest arises which would require a member of the Committee to recuse themselves from the discussion or selection process, the Chairperson of the Committee shall notify the President immediately and the President shall appoint a new member to the Nominating Committee to be ratified by the Board of Directors at their next scheduled meeting.

Qualifications of Director and Officer Candidates

1. Candidates for the Board of Directors must meet the definition of ABA's core member. A core member, for the purpose of this definition, is an ABA member who is the owner or employee of an independent bookstore with a storefront location that is operated according to sound business principles.
2. Board candidates must have at least three years of recent experience as an owner or employee of a member company.
3. It is desirable that candidates have at least two years of experience as an active volunteer in ABA or a regional

or other constituency organization, or possess similar experience.

4. Candidates for President and Vice President must be members of the Board of Directors and have served in this capacity for at least one year prior to assuming office.

When reviewing candidates for office, the Nominating Committee should consider the following:

1. The candidate should be committed to the Association's mission, goals, objectives, and strategic process.
2. The candidate should demonstrate a willingness and ability to devote the time to carry out substantive assignments.
3. The candidate should be committed to the principles of fiduciary responsibility.
4. The candidate should be committed to the best interests of all core members of ABA, giving them precedence over personal interests, regional interests, or any other interests.
5. The candidate should demonstrate good listening skills and be able to engage opposing points of view. The candidate must agree to abide by and support decisions of the Board as a whole, even when he/she may have a contrary personal opinion.
6. The candidate should demonstrate an ability to negotiate and compromise.
7. The candidate should exhibit qualities of leadership, creativity, and intelligence.
8. The candidate should have a strong reputation for integrity and character.
9. The candidate should contribute to the overall composition of the Board to help ensure that the Board is representative of the Association's diversity.
10. The candidate should have a national reputation in the bookselling industry and play a prominent, distinguished role in our community.

Nomination/Election Process

1. A call for suggested candidates will be disseminated to all voting members as well as others in the bookselling industry. This call will be accompanied by a description of the qualifications and responsibilities for members of the Board of Directors, including but not limited to information about authorized expenses, time required for meetings, Board training, time away from the store, and time away from other personal obligations
2. An application form will be developed and sent to all suggested candidates. The Nominating Committee will review all responses and compile a list of members who

- meet the criteria developed by the Committee.
3. The staff will check the slate to ensure that all potential nominees meet the established criteria (for example, if the potential nominees are current members of ABA, etc.).
 4. Each potential nominee will be called by a member of the Nominating Committee and asked whether he/she is prepared to serve under the terms adopted by the Association. The Nominating Committee may request a personal interview. Candidates will be sent copies of the Association's governance policies and strategic process and asked whether they subscribe to them.
 5. The Nominating Committee will develop a working slate for each Board vacancy, including one alternate.
 6. Current Board members eligible for renomination will receive similar scrutiny as each new potential nominee.
 7. Each candidate will be asked to provide a list of references identifying people who are personally familiar with his/her qualifications. Members of the Nominating Committee will contact these references to verify the candidate's qualifications.
 8. After thorough deliberation, the Nominating Committee will submit a slate of nominees to the Board of Directors for its approval, which shall not be withheld absent good cause.
 9. Each suggested candidate will be notified of the recommendations of the Nominating Committee.
 10. The list of candidates will be sent to all voting members in a manner as specified in the Bylaws. Persons who do not appear on the Nominating Committee's slate of candidates may be placed on the ballot if they submit a completed nomination form plus the required number of signatures of active members specified in the Bylaws. Those with sufficient signatures to qualify will be placed on the ballot, provided that they meet the qualifications that have been established for that office and subscribe to the Association's governance policies and strategic process.
 11. A ballot will be mailed to all qualified voters. It will contain a brief description of the candidate's qualifications, including whether the candidate has been proposed by the Nominating Committee or by petition. Each candidate will also be asked to prepare a brief written statement to be included in the ballot mailing.
 12. The completed ballots will be tallied by a third party (for example, an auditor) and will be announced to the

membership.

Selection/Election of Officers

1. The Bylaws of the Association, Article V (3), sets forth the procedure for the selection and election of Officers. As stated in Article V (1) those Officers are the President and the Vice-President/Secretary.
2. Article V (3) provides that the Board of Directors selects the nominees for the Officer positions to appear on the official ballot from among the continuing Board members and the new nominees presented by the Nominating Committee.
3. Prior to the meeting at which the Nominating Committee presents its nominees for Directors to the Board, the President will communicate with the Board reminding them that they will be required to select their choice of officer candidates to appear on the official ballot.
4. At the Board meeting the President shall open the floor for nominations for the office of President and, after the selection for President is made, for the office of Vice-President/Secretary.
5. It is within the discretion of the President to ask the person(s) nominated for any particular office to leave the Board meeting during the discussion of their nomination, but all Board members shall be eligible to vote on the nominations.
6. It is within the discretion of the President as to the method (open or closed) of voting on the nomination.
7. The Board's selections for President and Vice-President/Secretary shall appear on the official ballot for the election of Directors and Officers by Bookstore Members.
8. Bookstore Members may write in the names of officer candidates who meet the qualifications established by the Bylaws.
9. The Bylaws, Article V(3), provide that if the Bookstore Members fail to approve the nominees for Officers and there are no successful write-in candidates, the Board shall choose the Officers from among the remaining Board members.

Conflict of Interest — Statement of Policy

Statement of Policy

No board member shall use his or her position, or the knowledge gained therefrom, in such a manner that a conflict between the interest of the organization or any of its affiliates and his or her personal interests arises.

Each board member has a duty to place the interest of the organization foremost in any dealings with the organization and has a continuing responsibility to comply with the requirements of this policy.

The Conduct of Personal business between any board or committee member and the organization without disclosure and approval of the board of directors and any of its affiliates is prohibited.

Board or committee members may not obtain for themselves, their relatives, or their friends a material interest of any kind from their association with the organization.

If a board member has an interest in a proposed transaction with the organization in the form of a significant personal financial interest in the transaction or in any organization involved in the transaction, or holds a position as trustee, director, or officer in any such organization, he or she must make full disclosure of such interest before any discussion or negotiation of such transaction.

Any board or committee member who is aware of a potential conflict of interest with respect to any matter coming before the board or committee shall not be present for any discussion of or vote in connection with the matter.

Disclosure

To implement this policy, board members of the organization shall submit annual reports on the attached forms and, if not previously disclosed, will make disclosure before any relevant board or committee action.

These reports will be reviewed by the President, who will attempt to resolve any actual or potential conflicts(s) and, in the absence of resolution, refer the matter to the Board of Directors.

The guidelines for what might be disclosed may include all possible conflict arising from connections where "love, hate, blood or money" may be involved. If Board members are uncertain as to the nature of a possible conflict, they should consult the President or the Board's legal counsel.

Disclosure Regarding Conflicts of Interest

As a volunteer or senior staff member of the association, I recognize that I owe duties of care and loyalty to the association. One aspect of fulfilling those duties is to avoid conflicts of interest in which my allegiance might be split between an association position or responsibility and some other professional, business, or volunteer position or responsibility.

To help avoid conflicts, on this form I am disclosing other situations or areas in which it might even appear that I have conflicting duties to other entities. I invite any further review by the association of any aspects of these situations or areas that might be considered appropriate.

Also, I will take other steps, such as avoiding deliberation and resolution of certain issues or even withdrawing from my position in the association, if it is determined that those steps are necessary to protect against legal liability to the association or to me arising from conflicts of interest.

1. Professional, business, or volunteer positions or responsibilities that might give rise to conflicts:

2. Situations in which I am serving as a vendor, or am employed by or consulting with a vendor, to the association or its members:

3. I know of no professional, business, or volunteer position or responsibility, including vendor situation, that might give rise to conflicts (check here): _____.

Signature

Association position

Date

Confidentiality—Statement of Policy

GENERAL RULE: All communications, discussions, distribution of materials, financial analyses, and any other information that deals with the current, past, or future business and activities of the Association that occur when the Board of Directors is in session are confidential.

The Board of Directors must be free to have frank and open discussions on a wide range of subjects, some of which may be emotionally or politically sensitive. Each Board member, and the Board as a whole, must be secure in the knowledge that all such discussions are kept strictly confidential and within the confines of the Boardroom. Discussions outside of the Boardroom must be limited to the position and the action of the Board as a whole. It is only after a full and open discussion of issues in which a Board Member feels free to express him/herself without fear of having his/her comments taken out of context in an outside discussion that he/she will feel the comfort necessary to live with, and support, the decision of the Board as a whole. After such free and open discussion a Board Member has an obligation to support the decisions of the Board to the membership, press, and public at large. By accepting nomination and election to the Board the members agree to conduct themselves in this manner. If, after a free, open, and complete discussion a Board Member feels, for moral, legal, or other reasons, that he/she cannot publicly support the decision of the Board, the correct course of action is to resign.

From time to time, board members and Association officers and employees will, in the course of their duties, gain access to various kinds of confidential information. Such information may be of various types. The principle kinds include but are not limited to:

- Confidential information of Association members
- Advance notice of supplier plans or initiatives
- Business opportunities made known to the Association
- Knowledge of initiatives of the Association that may or may not confer business benefits

Since Board members, officers and employees of the Association serve to advance the interests of its members, they must take pains to assure that they do not use any such confidential information in a way that either promotes their personal interests at the expense of the members generally or that impairs the interests of any member.

Any questions about the use that may be made of confi-

dential information or the duties that may exist by reason of the possession of confidential information should be presented to the President of the Association, who can seek the advice of counsel, as appropriate.

This Confidentiality Policy allows for circumstances in which information acquired during a Board meeting can be shared with others. The Board acknowledges that all information imparted at Board meetings is not of a sufficiently sensitive nature to warrant adherence to a rigid standard of confidentiality. Further, the Board takes into account that, at times, a Board member may need or desire to share pertinent information with their employer or business partners. In such situations the Board member should first, either in the Board meeting itself, or in private discussions with the President, General Council, or CEO, establish whether such outside discussions would violate the policy of confidentiality. The general rule is that all Board discussion is confidential, so a Board member should always check before acting contrary to that policy.

As a general practice ABA Board members are not asked to sign a statement of confidentiality or non-disclosure agreements before information is distributed or discussions are entered into. There are occasions when Board members and staff will be asked, and required, to sign such statements. Those situations include, but are not limited to, those in which ABA staff has had to enter into such agreements in order to negotiate or have substantive discussions with third parties. In signing such statements the staff has generally bound the Board and the individual Board member's signature is just acknowledgment that they understand that such an agreement is in place. If, in a rare circumstance, a Board member feels that they could not observe confidentiality they need not sign the statement, but they must absent themselves from the boardroom during any discussion of the matter covered by the agreement. The rest of the Board will then treat the non-signing board member as non-Board member for purposes of confidentiality concerning the matter in question.

An example of a Non-Disclosure Agreement that Board members may be asked to sign is included on the next page.

Non-Disclosure Agreement

As Regards

Due to the Extremely Confidential Nature of Information that will be disclosed, each ABA Board Member (Board Member) is asked to review and sign the following Non-Disclosure Agreement, prior to the dissemination of any documents and commencement of any discussion regarding _____.

- a) Board Member shall not, at any time, disclose or allow the disclosure of any Confidential Information to any person, firm, corporation, association, government or other entity for any reason or purpose whatsoever (except as required by law), nor shall Board Member directly, or indirectly, make use of such Confidential Information for his/her own purposes for the benefit of any person, firm, corporation, association, or other entity.
- b) Each Board Member shall hold in strict confidence, and not disclose to any third party or use for any purpose, the confidential information provided in connection with the transactions contemplated hereby, except (i) as may be required by applicable law, or (ii) as such confidential information becomes public, other than due to a breach of this Agreement by the Board Member.
- c) No Board Member shall communicate to any person the contents of any Agreement and or any discussion leading up to, or in consideration of, matters concerning _____, except as required by applicable by law.

General Counsel

By:

Board Member

Date

Board of Directors Attendance Policy

When the ABA Board of Directors decided to revamp the governance structure of the Association, one of the key components of the new plan was a reduction in the size of the Board from twenty (20)-members to one of nine (9)-members. The concept was that the 20 person Board was unwieldy, expensive to convene, and replete with layers of committees and administration which, inevitably, resulted in parts of the board feeling “out of the loop,” and other segments of the Board (Executive and Finance Committees) sitting through various discussions multiple times. Rather than fostering discussions at the Board level, the former system resulted in discussion being cut short and the Board acting as a “rubber stamp” of the various committees.

The new governance structure has solved the problems mentioned above. Under the new system the Board sits as a committee of the whole on all issues. The Finance and Executive committees no longer exist. Even the Strategic Planning Committee consists of the 9 Board members plus 2 at-large members chosen from the Booksellers Advisory Council. Issues are discussed only as many times as is required for a full airing of the subject matter, and no Board member feels left out of the decision making process.

While these changes have been very constructive, they place a premium on active and engaged participation of all 9 Board members. The deliberations and dialog that take place on issues of policy, after appropriate input with constituencies, are intense. A great deal of information is disseminated to board members to assist them in their

policy setting role. Absence of a Board member from a meeting is sorely felt, as, presumably, all Board members have been chosen with a belief that they bring talent, knowledge, uniqueness, as well as an element of diversity to the Board table. To state it plainly and simply—each and every member of the ABA Board of Directors must make every reasonable effort to attend all meetings. The pledge to attend all meetings is fundamental to the acceptance of nomination to the Board.

That being said, the Association is mindful of life’s emergencies. There naturally will be circumstances that make attending a meeting impossible for a Board member. Recognizing that these situations do occur, the Board asks that any Board member who must miss a meeting notify both the President and the CEO as soon as is practical under the circumstances. The Board member who must miss the meeting should also inform the President or the CEO of the reason for missing the meeting. The notification can be made by e-mail.

It must be noted that the Bylaws of the Association state that a Board member can be removed from the Board for cause, and that the Board has designated, without specifying the number of meetings missed, absenteeism as cause for removal. The Board has specifically emphasized the great importance of full participation by specifically bringing the importance of these matters to the attention of both sitting Board members, as well as nominees to the Board.

Board Orientation

- 1.) Strategic Planning
 - a.) How it works at ABA
 - b.) The Carver Method

- 2.) Policy Manual
 - a.) Governance Documents
 - b.) Practice Documents

- 3.) What it means to be an At-Large Board Member

- 4.) Conflicts of Interest and Confidentiality
 - a.) With other organizations
 - b.) In dealings on the Board
 - c.) In outside relationships (endorsements?)

- 5.) Staff Structure

- 6.) Process issues
 - a.) How does an issue get to the Board?
 - b.) How does something get on the Board Agenda?

- 7.) Antitrust issues
 - a.) We are a group of competitors
 - b.) Issues to avoid

Board/Member Communication Policy

Introduction:

From time to time members of the ABA Board of Directors may be contacted by members of the Association. This policy is meant to answer the question as to the appropriate handling of such communications irrespective of their form. The communication could deal with a decision, practice, policy, or program of the Association.

Policy:

The Board member(s) receiving a communication should keep in mind that they are being contacted in their capacity as a Board member. It is important to find out if the President and the senior staff is aware of the communication. The way to determine this is to immediately forward a copy to both the President and the CEO. If the communication is by phone the Board member should call or e-mail the President and/or the CEO to discuss the situation. Historical context is often very important in formulating a thoughtful and helpful response to inquiries. That type of information often resides with the staff and officers of the Association because of their extensive contacts with the membership over time.

Usually, if only one Board member received the inquiry, and a full Board discussion is not required, a response should be written and sent to the President for review. Both the President and the Board member writing the response should feel free to consult the CEO. It is always important to remember that the response should be open and thought-

ful, but that only final positions of the Board should be included. Individual opinions that differ from the position of the Board are inappropriate, but may be referred to as being discussed in full and not included in the final decision, if, in fact, they were included in the discussion.

If a communication has been received by several, or all, members of the Board, it is up to the President, in consultation with the CEO, if necessary, to determine the appropriate means of response. The President may write the response or designate the CEO or another member of the Board to do so. There may be times when more than one response is appropriate, but it is up to the President to make such determination.

When a member, or group of members makes a suggestion, concerning an item they would like the Board to consider, the Board member receiving such a request should pass it on to the President and inform the member making the request that they have done so. The President will have the item placed on the agenda of the next Board meeting. After the item has been considered the member should be informed (by the President or designee) as to the action, if any, taken by the Board. If the President designates a Board member to communicate with the member it is the President's responsibility to follow up to insure that the desired communication, in fact, takes place. If anyone other than the President is designated to make such a communication, they should copy the President on any written or e-mail documents.

The Fundamentals

Book Publishers' Obligations to Book Retailers Under the Federal Antitrust Discrimination Law

The Federal Antitrust Discrimination law, the Robinson-Patman Act, was enacted to protect the ability of smaller retailers to compete on an equal basis with larger retailers such as national chains. As applied to book publishing, the law prohibits publishers from discriminating in favor of chains both in wholesale pricing and in promotional allowances.

The American Booksellers Association began an intensive investigation of publishers' discriminatory sales practices in 1993; litigation against several publishers commenced the following year. Since then, ABA has often been asked by member booksellers, by publishers and publishers' representatives, by regional booksellers' association, and by the trade and general press for a simple explanation of what publishers must do to comply with the law. These "Fundamentals" are derived from the "Rules for the Application of the Robinson-Patman Act to Book Publishing", which were accepted by major book publisher defendants that have settled in the ABA litigation; the "Rules" are included in the public, court-approved settlement documents.

Neither the "Rules", nor these "Fundamentals" that are derived from them, can be considered a comprehensive statement of all the complex requirements of the Robinson-Patman Act and the practices it addresses. These "Fundamentals", however, will serve as a useful summary of the major aspects of the applicability of the federal antitrust discrimination law to book publishing.

Price Discrimination

- A publisher must sell books at the same price to all competing retailers that purchase the same or similar books. The only exceptions are where:

Lower prices can be "cost justified" by demonstrable savings to the publisher (e.g., for larger-volume orders, but only to the extent that the publisher can show that it is less costly to sell the larger orders);

Lower prices are offered to "meet the competition" from a legitimate offer by another publisher for the same or substantially similar books (i.e., the publisher believes in good faith that: (1) a competitor is offering the lower price, (2) the publisher would lose a significant amount of business if it failed to meet the lower price, and (3) the publisher limits the lower price to the terms of the competing one); or

Lower prices are due to "changing conditions" (i.e., obsolescence of seasonal items about to lose most of their value, a court-ordered sale, or going out of business or out of a line of business).

- "Competing retailers" include all businesses that purchase the same or similar books from publishers to re-sell to consumers in competition with one another. This includes independent and chain bookstores, department stores, book clubs, warehouse clubs, toy stores, gourmet shops, garden shops, newsstands, catalog sales, TV shopping networks, etc.
- Credit terms, freight terms, book return rights, and other terms of sale must be the same for all competing retailers unless one of the exceptions applies (cost justification, meeting competition, or changing conditions).
- A publisher's price terms must be communicated to all competing retailers so that each one has the opportunity to take advantage of all of the publisher's offers on a non-discriminatory basis.

Promotional Allowance Discrimination

- If a publisher offers promotional allowances, they must be proportionally equal for all competing retailers that purchase the same or similar books. The only exception is where:

Allowances are offered to "meet the competition" from a legitimate offer by another publisher for the same or substantially similar books (i.e., the publisher believes in good faith that: (1) a competitor is offering a larger promotional allowance, (2) the publisher would lose a significant amount of business if it failed to meet the offer, and (3) the publisher limits its offer to the terms of the competing one).

- "Competing retailers" include all businesses that purchase the same or similar books from publishers to re-sell to consumers in competition with one another. This includes independent and chain bookstores, department stores, book clubs, warehouse clubs, toy stores, gourmet shops, garden shops, newsstands, catalog sales, TV shopping networks, etc.

- Any promotional allowances offered must include alternatives that can practicably be used by both smaller and larger competing retailers.
- Any promotional allowances offered must be based upon both the retailer's direct purchases from the publisher and its indirect purchases of the publisher's books through wholesalers.
- Administrative requirements to qualify for promotional allowances must be the same for all competing retailers.
- A publisher's promotional allowance terms must be communicated to all competing retailers so that each one has the opportunity to take advantage of all of the publisher's offers on a non-discriminatory basis.

Questions and Answers

Can publishers give larger discounts for larger-volume purchases by retailers?

Yes, but the volume discounts cannot be established arbitrarily; the publisher must be able to show that it will benefit from actual net cost savings that will equal any higher discount for larger volume purchases. For example, a publisher's possible lower sales costs from a larger purchase by a chain might be offset by possible higher book return rates from the chain than from others such as independent bookstores; high returns impose significant costs upon publishers.

Can the publisher give a larger discount to compensate a retailer for some additional or unusual cost incurred by the retailer?

No. the publisher can only justify a larger discount to reflect reduced costs of its own. It cannot justify larger discounts on the basis of a retailer's increased costs.

Can the publisher give better prices to select customers for sales at book fairs or for other "special sales"?

No. If those receiving the "special sales" discounts compete with bookstores for the resale of the books, the bookstores must have the chance to get the same discounts on the same terms.

Can a publisher require one retailer to pay in thirty days and permit a competing retailer to take sixty or ninety days to pay?

No. This is also illegal price discrimination. Arbitrarily granting better payment terms to larger retailers than to smaller retailers is prohibited. Likewise, discrimination in enforcing credit terms is illegal – the publisher cannot automatically place a small retailer on C.O.D.

when its account is overdue but refrain from placing a larger retailer on C.O.D. for its overdue account.

Can a publisher give better prices or terms to warehouse discount clubs, toy stores, or gourmet stores that sell books in competition with bookstores?

No. While some publishers have claimed that non-bookstore retailers are in different "markets" and have provided different prices and terms to them for the same or similar books as those sold to bookstores, the practice is illegal because bookstores compete with the non-bookstore retailers for the sale of those books. If non-bookstore retailers are permitted to buy books at larger discounts but on a non-returnable basis, bookstores must be permitted to do the same.

What about publishers' deals with book clubs?

It depends. The federal antitrust discrimination law applies only to sales of item; if a book club obtains a legitimate, "arm's length" license for the right to reprint a publisher's title and proceeds on its own with the reprinting, there is no sale of an item and the law does not apply; however, if the publisher provides the same or similar printed books to a book club as it provides to bookstores or other retailers in competition with the book club for sales of books, the publisher may not discriminate in prices, terms, or promotional allowances in favor of the book club.

Can a publisher give additional discounts to a "retail distribution center" ("RDC") operated by a bookstore chain to supply the chain's bookstores?

The publisher can give additional discounts for each of the functions performed by an RDC if: (1) the publisher can demonstrate actual, commensurate reduced costs to itself for each function performed by the RDC (it cannot base additional discounts on the fact that the RDC incurs additional costs), and if (2) independent bookstores are offered the same discount for each RDC function that they perform (i.e., ordering in carton quantities taking delivery by long-distance carrier where the publisher is paying for freight, etc.). The publisher cannot legally "bundle" together requirements for RDC functions that do not reduce costs for the publisher (e.g., a requirement that the RDC not be part of a retail store or that the RDC use specified carriers when the publisher does not pay freight) or that independent bookstores cannot perform (e.g., a requirement that the RDC serve at least 10 retail stores) in order to exclude the independents from the "bundled" RDC discounts. Note also that publishers' possible lower costs in selling to chains through the RDCs could also be offset by other costs such as high book return rates from the chains; this would make it illegal to give any RDC discounts to the extent of the offset.

Are publishers absolved of responsibility for otherwise illegal discrimination if they favor certain retailers because “everybody’s doing it,” i.e., other publishers are discriminating?

No. The “meeting competition” exception applies only to specific, individual transactions under limited and qualified circumstances. Most important, the competition a publisher is purporting to “meet” must itself be legal and non-discriminatory (e.g., if one publisher matched another publisher’s non-“cost-justified” discount or secret promotional allowance, it would not fall under the exception).

Can a publisher “package” two or more books together and offer to favored retailers a greater discount on the “package” than the combined discounts on the same individual books when offered to other retailers?

No. This is illegal price discrimination. The publisher must give all competing retailers an equal chance to buy packages of books offered by the publisher.

Can a publisher favor certain bookstores by shipping new releases earlier than to other bookstores?

No. Particularly for a new release title that receives extensive publicity and for which each day of initial sales gained or lost can be significant, favoring certain stores with earlier shipments is illegal discrimination.

Can publisher permit some bookstores, but not others, to take a credit from their outstanding accounts in recognition of an anticipated return of books or for estimated percentages of damaged or short-shipped books?

No. This would be providing illegally discriminatory terms of sale. If one retail account of the publisher is offered such a concession, all competing retail accounts must be offered the same concession.

Can a publisher pay freight for some retailers but not for other that compete with the favored ones?

No. This would be illegal price discrimination because of the unequal terms.

Where the publisher requires a minimum number of books to be ordered to qualify for a higher discount, can it waive the minimum requirement for orders from only some favored retailers (i.e., provide the high-volume discount for low-volume orders)?

No. Again, this is illegal price discrimination.

Is it illegal for publishers to offer additional discounts to bookstores after the books are sold and shipped (i.e., “remaindering in place”)?

No, as long as all competing retailers are given equal notice at the same time and equal opportunity to utilize the additional discounts.

May a publisher provide wholesale discounts to a wholesaler that is affiliated with (owned by or owns) retailers?

Yes and no. A publisher may provide a wholesaler discount to a wholesaler that is affiliated with retailers, but only on books sold by the wholesaler to retailers not affiliated with the wholesaler. For sales the wholesaler makes to its affiliated retailers, the wholesaler must be provided no more than the same discount that the retailers would get if they bought directly from the publisher.

Can publishers offer larger discounts only to certain retailers that buy books at the end of a print run?

No. If a publisher offers a special discount on purchases of books at the end of a print run, it must offer the special discount to all competing retailers.

How can publishers assure that promotional allowances are offered to competing book retailers on a “proportionally equal” basis?

Most often it is done by basing the sizes of the allowances on the retailers’ past or current purchases from the publishers.

Are publishers required to offer promotional allowances?

No. It is only if a publisher elects to offer promotional allowances to any retailer that the allowances must be proportionally equal for all competing retailers.

Are retailers obligated to approach publishers about the availability of promotional allowances?

No. The law requires publishers to “make available” promotional allowances, if they do so at all, on a proportionally equal basis to all competing retailers. Publishers must take the initiative to announce to all competing retailers the availability of all promotional allowances.

May publishers limit promotional allowances to activities which only larger retailers can undertake such as national advertising?

No. Publishers must provide alternatives for use of promotional allowances so that they are practically available on a proportionally equal basis to all competing retailers’ publishers must therefore be flexible in the permitted uses of promotional allowances.

Can promotional allowances include payments to retailers for displaying certain titles?

Yes. Placement funds can be provided by publishers as long as they are provided on a proportionally equal basis to all competing retailers.

Can promotional allowances be limited to only direct purchases from the publisher or to only indirect purchases through wholesalers?

No. To be available on a proportionally equal basis, promotional funds must be available to retailers on both direct purchases from the publisher and on indirect purchases of the publisher's books through wholesalers; publishers may require reasonable, non-discriminatory documentation to substantiate indirect purchases through wholesalers before crediting them towards promotional allowances.

Can a publisher pay the retailer a greater amount than the retailer's actual costs when reimbursing for some promotional activity by the retailer, such as an advertisement?

It depends upon the circumstances, but usually this practice is illegal. Overpaying for promotional activities ordinarily indicates that the publisher is making disproportionate, and therefore illegal, payments. Alternatively, the overpayment can be viewed as an increased discount. Both of these are illegal unless offered to all competing retailers.

Can the publisher require bookstores to substantiate certain kinds of promotional allowances, such through the submission of as tear sheets for advertisements?

Yes, but publishers cannot discriminate in favor of some retailers by waiving or reducing the substantiation obligation for them alone. The administrative requirements must be the same for all competing retailers.

Are secret or unannounced promotional allowances illegal?

Yes. Secret or unannounced promotional allowances are simply not available (proportionally or otherwise) to retailers that do not know about them; they are therefore illegal.

Can publishers provide promotional allowances to bookstores in return for additional retail discounting on the publishers' titles?

Yes and no. This practice could be illegal price discrimination unless offered to all competing retailers. If publishers offer promotional allowances for retail discounting, the allowances must be offered to all competing retailers on a proportionally equal basis.

Can publishers permit some bookstores but not others to take a credit from the bookstores' outstanding accounts owed to the publishers in recognition of promotional allowances earned by the bookstores?

No. Publishers must administer the availability of promotional allowances on a non-discriminatory basis.

ASAE Antitrust Guide for Association Members

pages 6-5 through 6-10

PREFACE

There is no reason for a company or an individual to withhold participation in, support for, or membership in an association for fear of violating the antitrust laws. There are, however, areas of the law you should know about in order to maintain strict compliance with the antitrust laws.

The following guide has been prepared by Arthur L. Herold, Webster, Chamberlain & Bean. It is designed to give a brief look at potential problem areas and suggest procedures associations should follow to maintain compliance with the antitrust laws.

It is presented here in outline form to serve as a reference guide for association members.

asae

AMERICAN SOCIETY OF
ASSOCIATION EXECUTIVES
1575 "I" STREET, N.W.
WASHINGTON, DC 20005-1168

(202) 626-2748

© American Society of Association
Executives, 1996.

ANTITRUST GUIDE FOR ASSOCIATION MEMBERS

AN OUTLINE OF
PROCEDURES TO
MAINTAIN COMPLIANCE
WITH THE LAW

BY ARTHUR L. HEROLD

asae

I. APPLICATION OF ANTITRUST LAWS TO ASSOCIATION ACTIVITIES

Trade associations are subject to strict scrutiny under both federal and state antitrust laws. Associations are particularly vulnerable to attacks by federal and state antitrust enforcers, because an association is, by its nature, a group of competitors joined together for a common business purpose. Therefore, associations must proceed with extreme caution in certain areas of activity to ensure against violation of the federal antitrust laws and antitrust statutes that have been adopted by most states.

There are both civil and criminal penalties that can be imposed for violating the antitrust laws.

II. THE SHERMAN ACT AND THE FEDERAL TRADE COMMISSION ACT

The most important antitrust statutes relating to association activities are Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission

Act. Section 1 of the Sherman Act prohibits "contracts, combinations, or conspiracies...in restraint of trade." Since an association is by its very nature a combination of competitors, one element of a possible violation is already present. Only the action to restrain trade must occur for there to be a violation.

The Sherman Act prohibits any understanding affecting the price of a product regardless of the purpose of the understanding. For example, if members of an association reach any form of an understanding or agreement concerning price, they cannot justify the understanding by showing that it will benefit consumers.

Association executives must also remember that the Sherman Act is a criminal conspiracy statute. If you are not an active participant—if you merely sit by at a meeting while the members of the association engage in an illegal discussion concerning price-fixing, you may be held criminally responsible, even though you said nothing during the discussion. Mere attendance at such a meeting may be sufficient to imply acquiescence in the discussion and thereby make such an individual as liable for a penalty as those who actively agreed to fix prices.

Section 5 of the Federal Trade Commission Act prohibits "unfair methods of competition in or affecting commerce." Unlike the Sherman Act, the Federal Trade Commission Act

reaches anticompetitive acts committed by single persons or companies, whether or not there is any agreement or "combination"; like the Sherman Act, it also covers joint actions.

The FTC has broad power to determine what constitutes an unfair method of competition or unfair or deceptive act or practice under any given circumstances. Because antitrust statutes cover such a wide range of charges and provide for such severe penalties, each association should establish an antitrust compliance program and make every possible attempt to stop any potential antitrust violation before it begins.

III. PENALTIES FOR VIOLATION OF THE ANTITRUST LAWS

Federal antitrust laws may be enforced against associations (and their members and staff) both by government officials and by private parties. In both cases, penalties are severe.

An individual convicted of a criminal violation of the Sherman Act may be fined up to \$350,000 and imprisoned for up to three years. A corporation convicted of such a criminal offense may be fined up to \$10 million.

Civil violations of the Sherman and Federal Trade Commission Acts can result in issuance of a cease and desist order or dissolution of the association. Failure to obey such an order can result in substantial civil penalties.

In addition to governmental prosecution for a criminal or civil violation, the association, its members, and its staff can face private action for treble damages brought by competitors or consumers. A finding of violation of the antitrust laws in such a private action will result in payment by the defendant of treble damages to the injured plaintiff.

IV. ANTITRUST PROBLEM AREAS OF ASSOCIATION ACTIVITY

From a practical standpoint, associations should focus their concern on five principal antitrust problem areas: price fixing, agreement to divide customers or territory, membership restrictions, standardization and certification, and industry self-regulation.

PRICE FIXING

Experience shows that association members are most likely to violate, and the government is most likely to strictly

enforce, the price-fixing prohibitions of the Sherman and Federal Trade Commission Acts. A price-fixing violation may be inferred from similar price behavior by members, even in the absence of a written or oral agreement. If price fixing is established, the association and its members may not raise the defense that the prices set are reasonable for that the ends sought through the price-fixing behavior are worthy.

AGREEMENT TO DIVIDE CUSTOMERS OR TERRITORY

An agreement among members of an association to divide customers is, in and of itself, a violation. The antitrust laws expressly prohibit any understanding or agreement between competitors or members of an association involving division or allocation of customers or territory. Even an informal agreement whereby one member agrees to stay out of another's territory will constitute a violation of the antitrust laws.

MEMBERSHIP RESTRICTIONS

Assuming that an association provides an essential economic benefit, the denial of membership to an applicant or the denial of access to the services to nonmembers may constitute a restraint of trade because such a denial may limit the ability of the applicant or nonmembers to compete. Therefore, membership criteria must be carefully established with a view toward avoiding antitrust

problems, as well as the policy regarding access to nonmembers.

STANDARDIZATION AND CERTIFICATION

An association that develops voluntary industry standards may face anti-trust problems if such a standard is not carefully developed and reasonably applied. Similarly, association certification activities must be administered in a nondiscriminatory manner.

INDUSTRY SELF-REGULATION

Associations commonly establish codes of ethics for their members, including procedures for enforcement of such codes. The association must exercise care if it seeks to enforce its code in order to avoid antitrust problems.

V. HOW TO AVOID ANTITRUST PROBLEMS

Associations should adopt the following rules in order to ensure against unintentional violations of the antitrust laws.

GENERAL OPERATING PROCEDURES

1. A full description of the association's intention to comply fully with

<p>the antitrust laws should be included in its bylaws or in a written policy statement of the association.</p> <ol style="list-style-type: none"> 2. All members of the board of directors of the association should receive a copy of the association's antitrust policy statement, detailing what can and cannot be done at association meetings. 3. The association's legal counsel should update members concerning antitrust problems periodically and should formalize the association's antitrust compliance program. 4. The association's legal counsel should approve in advance all new association programs or changes in existing programs that may have potential antitrust implications. In this regard, special attention should be given to statistical reporting and credit reporting programs. 5. All association meetings should be regularly scheduled, and members should never hold "rump" meetings. 6. An agenda should be prepared for each meeting of the association, and the agenda should be reviewed in advance by legal counsel. 7. Legal counsel should be present at all meetings of the board of directors and at any other meeting at which sensitive issues will be discussed. 8. The minutes of all meetings should be approved by legal counsel. The minutes should reflect the associa- <p style="text-align: center;">8</p>	<p>tion's policy of complying with the antitrust laws.</p> <ol style="list-style-type: none"> 9. The minutes of all association meetings should be accurate and the association executive should never sign minutes that have been doctored, that are incomplete, or that have not been approved by legal counsel. 10. Any action by the association or its board of directors that has the effect of rejecting a membership application should not become final without approval by legal counsel. 11. The association should develop a formal record retention program. 12. No association staff member should have authority to communicate with officials of the Federal Trade Commission or the Antitrust Division of the Department of Justice without prior approval of the association's legal counsel. <p>MEMBERSHIP POLICY</p> <p>The association should not:</p> <ol style="list-style-type: none"> 1. Exclude certain competitors from membership in the association especially if there is arguably an essential business advantage of being a member. 2. Restrict members from dealing with nonmembers 3. Limit access to information developed by the association, unless such <p style="text-align: center;">9</p>
--	--

limitation is firmly grounded upon the need to protect trade secrets.

SELF-REGULATION AND CODES OF ETHICS

The association must not:

1. Adopt regulation or policies that have price-fixing implications, such as prohibitions on advertising of prices, or that unreasonably restrict the ability of any member or group of members to compete.
2. Require members to refrain from dealing with a member who has violated the association's code of ethics
3. Enforce the code of ethics arbitrarily
4. Impose unreasonably severe penalties for violation of a code of ethics

TOPICS OF DISCUSSIONS THAT MUST BE AVOIDED AT ASSOCIATION MEETINGS

1. Current or future prices (great care must be taken in discussing past prices)
2. What constitutes a "fair" profit level
3. Possible increases or decreases in prices
4. Standardization or stabilization of prices
5. Pricing procedures
6. Cash discounts
7. Credit terms

10

8. Control of sales
9. Allocation of markets
10. Refusal to deal with a corporation because of its pricing or distribution practices.
11. Whether or not the pricing practices of any industry member are unethical or constitute an unfair trade practice.

11

ABA Board Expenses and Procedures

Revised Policy as of September 15, 1998

The following is ABA's current policy on Board and Committee expenses. The Board may change this policy.

- 1) ABA reimburses the least expensive reasonable round-trip transportation for ABA-related functions and activities.

Arrangements should be made with ABA's travel agency. If arrangements must be made on any other basis, travel and accommodation reimbursement is limited to the amount that would have been expended on your behalf by the travel agency.

- 2) ABA does not pay for any travel or accommodation of spouses or companions for volunteer Board, committee members, task force members or other invited to participate in ABA related functions and activities. ABA will reimburse you for the single rate including taxes for the number of nights you are required to stay on actual ABA business; any nonessential hotel nights are not reimbursable.
- 3) Spouses and friends must reimburse ABA for meals charged to ABA except for companions at ABA Board dinners, in conjunction with Board meetings. The Board may from time to time make other exceptions.
- 4) The ABA will reimburse Board members for that part of the Convention and Tradeshow that is directly related to official Board business.

- 5) Generally, ABA assigns an official hotel. Should you decide that you wish to stay at an alternative location, you will be reimbursed only up to the amount of the cost of the official hotel.
- 6) While there is no per diem meal rate, it is expected that good judgement will allow ABA representatives, when traveling on ABA business, to know what is fair and reasonable and to exercise judgement accordingly.
- 7) An expense reimbursement form is provided and must be submitted within 60 days of any ABA meeting, in order to qualify for reimbursement. Receipts, with detail (e.g., photocopy of credit card receipt or statement plus hotel detail) are requested; they are required for amounts in excess of \$25.
- 8) Sometimes, car rentals may be required and may be reimbursed also, depending upon location, a volunteer may drive his/her own automobile to the place of the meeting, in which case parking charges will be reimbursed. Under most circumstances, specific ground transportation directions or options will be given to you well in advance of the meeting.
- 9) ABA's Business Travel Accident policy covers directors and officers for an amount of \$150,000 for accidental death or dismemberment, which occurs during travel on ABA business.

Personnel Policies and Procedures

The Employee Manual is intended to provide you with information on ABA's employment policies. While it is not possible to put everything into writing, we anticipate that this Manual will provide you with general information concerning your employment at the Association. This Manual is not an employee contract. The policies described in this Manual are meant as broad internal guidelines, which the Association may change or update from time to time.

While we urge you to consult the Manual whenever you have a question, if you do not find the answer here, please contact your supervisor or any other member of management. Of course, we welcome your comments and suggestions for improving all aspects of our operation.

History of ABA

On November 15, 1900, six booksellers sent a circular letter to their colleagues calling for the establishment of an American Booksellers Association (“Association”). Their aims were to facilitate communication, improve conditions and professionalize practices among the country’s far-flung booksellers. The first meeting, in New York the following year, brought together 35 delegates. This association grew to more than 5,000 members at one time. Today there are approximately 3,000 members.

In its early years, the Association helped to establish an equitable discount pricing system that allowed booksellers to retail, publishers to distribute, and the public to enjoy access to a large and varied assortment of books.

Today, the American Booksellers Association is a non-profit trade organization whose mission is to provide advocacy, opportunities for peer interaction and learning, support services, and new business models that enable independent professional booksellers to compete successfully in a changing world. The Association is dedicated to representing the interests of booksellers on national and international issues, and is committed to education, research, and the dissemination of information to the book-selling community worldwide.

Members include independents, specialty, franchise, college and university stores, and others with a special interest in bookselling. Together they constitute a key part of an industry which generates nearly \$8 billion in bookstore sales annually in the United States alone.

The Association is governed by a volunteer Board of Directors, elected on an annual basis, and composed of some of America’s best bookselling professionals. The Board consists of a president, vice president, and seven directors. The Chief Executive Officer is appointed to run the programming, planning, and daily operations of the association in tandem with the entire staff. Various volunteer bookseller committees, sub-committees and short-term task forces are comprised of members appointed by the president and assist in targeting the Association’s annual goals.

This manual is a general summary of our personnel policies and practices and it should not be considered a total and complete statement of all Association policies. Association regularly reviews its policies, and it reserves the right to amend or terminate its policies, procedures and benefits at any time without notice. Association will try to keep this manual current, but there may be times when policies, procedures or benefits may be amended or terminated before this manual can be revised. Thus, this manual does not create an express or implied contract of any kind.

Consistent with applicable law, employment may be terminated at any time and for any reason, with or without notice, at the option of either Association or the employee. Neither this manual nor any of the policies, procedures or benefits contained in it are intended to alter this “employment at-will” relationship or to guarantee employment for any specific period of time. The at-will relationship may only be altered in a written employment contract signed by the Association’s President.

Employment Practices

Equal Employment Opportunity Policy

The Association is committed to providing equal opportunity in employment to all employees and applicants for employment without regard to race, religious creed, color, age, sex, national origin, disability, or any other characteristic protected by applicable law.

This policy applies to all aspects of employment, including, without limitation, the following:

- Recruitment, advertising or solicitation for employment
- Hiring, placement, promotion, transfer or demotion
- Selection for training or development (on or off the job)
- Treatment while employed
- Salary and other compensation
- Discipline
- Termination and retirement

Anyone who believes that this policy has been violated by a co-worker, supervisor, manager, vendor, or client should immediately contact his or her supervisor or the Association's designated Equal Employment Opportunity ("EEO") coordinator. The Association will conduct an investigation and take appropriate corrective action as it deems necessary. Anyone found to have violated this policy will be subject to discipline up to and including discharge. The Association strictly prohibits discrimination in employment and will not tolerate such behavior.

The Association also strictly prohibits retaliation in any form against anyone who has reported or witnessed discrimination, or who has participated in any manner in an investigation under this policy. Any person who believes that he or she has been improperly retaliated against in violation of this policy should follow the complaint procedure set forth above.

Policy Against Harassment

The Association will not tolerate the harassment of anyone in its employ by anyone in the workplace, including supervisors, co-workers, or non-employees, on the basis of a characteristic such as race, color, religion, sex, national origin, age, disability, protected activity (*i.e.* opposition to prohibited discrimination or participation in the statutory complaint process) or any other characteristic protected by applicable law.

Harassment is generally defined as unwelcome verbal, physical or visual conduct that denigrates or shows

hostility or aversion to a person because of a person's protected characteristic. Harassment may include the following conduct: epithets, slurs, negative stereotyping, threats, intimidation, hostile acts, denigrating or hostile written or graphic material posted or circulated in the workplace, or any other act that interferes with another employee's work performance or creates a hostile, intimidating, or offensive work environment.

All forms of discrimination and harassment are prohibited. Sexual harassment, however, must be defined in greater detail since it has a special legal definition and is often misunderstood.

Sexual harassment generally consists of unwelcome sexual advances, requests for sexual acts or favors, or other physical or verbal conduct or visual displays of a sexual nature when:

- submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (e.g. treating an employee favorably for engaging in such conduct or unfavorably for refusing to engage in the conduct); or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment can include, without limitation, unwanted sexual advances; subtle or overt pressure for sexual favors; sexual jokes, innuendos, advances or propositions; verbal abuse of a sexual nature; graphic commentary about an individual's body, sexual prowess or sexual deficiencies; leering; whistling; touching; pinching; assault; coerced sexual acts; or suggestive, insulting or obscene comments or gestures; displays in the workplace of sexually suggestive objects or pictures; and other physical, verbal, or visual conduct of a sexual nature.

This kind of behavior is unacceptable at the workplace and in any work-related setting.

Consenting romantic and sexual relationships between employees in senior or supervisory positions and less senior or lower-level employees, or between coworkers, may lead to unforeseen complications. The respect and trust accorded a more senior-supervisory person by a

lower-level staff member, as well as the power held by the senior/supervisory person in evaluating or otherwise supervising the lower-level person could diminish the extent to which the lower-level employee really feels free to choose. Therefore, everyone should be aware of the possible risks of even an apparently consensual sexual relationship. With this in mind, the Association may reassign or rearrange reporting functions or other roles of individuals engaged in a consenting relationship to avoid potential problems in this regard.

If you experience or witness sexual or other unlawful harassment in the workplace, report it immediately to your supervisor. If the supervisor is unavailable or you believe it would be inappropriate to contact that person because, for instance, the supervisor is the harasser, you should immediately contact either the Association's CEO or designated EEO coordinator. It is imperative that you report harassment immediately so that the Association has an opportunity to stop the harassment before it becomes severe or pervasive. You can raise concerns and make reports without fear of reprisal or retaliation; the Association will not tolerate adverse treatment of employees because they report harassment or provide information related to such complaints.

All allegations of sexual harassment will be promptly, thoroughly, impartially and discreetly investigated. The Association will try to protect your confidentiality and that of any witnesses and the alleged harasser to the extent possible. The Association will take immediate and appropriate corrective action when it determines that harassment has occurred.

Types of Employment

All Association employees are "at will" employees, i.e., their employment may be terminated with or without cause, and with or without notice, at any time at the option of either the employee or Association. Benefits eligibility is governed by the eligibility requirements of the official plan documents for each benefit plan. All employees generally fall under one of the following classifications:

1. Regular Full-Time Employee

A full-time employee is defined as one who is regularly scheduled to work 35 hours or more hours per week. Currently, a full-time employee is generally eligible for all Association benefits described in this Manual in accordance with the eligibility requirements set forth in the official Plan documents for such benefits.

2. Regular Part-Time Employee

A part-time employee is defined as one who is regularly scheduled to work less than 35 hours per week. Currently, part-time employees who are regularly scheduled to work an average of 20 hours per week are eligible for some Association benefits in accordance with the eligibility requirements set forth in the official Plan documents for such benefits. Part-time employees who work less than 20 hours per week are currently not entitled to any Association benefits.

3. Temporary Employee

A temporary employee is defined as one who is hired for an express purpose for a limited amount of time. This would include employees hired during the summer and on a seasonal basis. Temporary employees, like all other Association employees, are employed on an at-will basis, which means that their employment may be terminated for any reason at any time, with or without notice. No Association employee is guaranteed employment for a specific period of time, unless such guarantee is expressly set forth in a written contract signed by President of ABA board of directors. Temporary employees are currently not eligible for any Association benefits.

Exempt/Nonexempt Employees

Employees are either exempt or nonexempt employees. An employee's classification is determined by reference to the requirements of the federal Fair Labor Standards Act (FLSA).

Hourly nonexempt employees are paid on an hourly basis and are paid time and one-half for overtime, which is hours worked in excess of 40 hours in a given workweek. Salaried nonexempt employees are paid on a bi-weekly basis, and are also entitled to the overtime.

Exempt employees are not entitled to overtime pay.

Pay Provisions

Payday/Pay Periods

Payroll is generally processed every two weeks with pay-days generally occurring on Thursdays. If a payday should fall on a holiday, employees will generally be paid on the work day preceding the holiday.

If you receive a paycheck for an incorrect amount, report it immediately to the payroll/benefits administrator.

Overtime

Overtime is paid for nonexempt employees for all hours worked in excess of forty (40) hours in a given work week. Overtime for nonexempt employees needs to be pre-approved by the department director and submitted on a time sheet. Failure to obtain advance approval for overtime may result in disciplinary action, up to and including immediate discharge. Overtime is paid on the paycheck subsequent to the period worked. Paid holidays, vacations and leaves of absence are not considered hours worked for the purpose of computing overtime.

Work Week and Work Schedule

The normal work week currently is Monday through Friday, and the general hours of operation are 9:00 a.m. through 5:00 p.m., with one hour for lunch. For purposes of calculating overtime, the workweek begins at 12:01 a.m. on Sunday and ends at 11:59 p.m. on Saturday.

Personal and Payroll Check

It is contrary to Association policy to cash any personal or payroll checks. Employees are requested to make other arrangements in cashing such checks.

Employee Benefits

General Information Regarding Benefits

ABA currently offers certain benefits to eligible employees, including medical, dental, life, accidental death and dismemberment, and long-term care insurance plans; a 401k Savings Plan; a simplified employee pension “SEP” program; and paid vacation leave. Eligibility for each benefit depends upon the specific requirements of each benefit plan. ABA reserves the right to modify or terminate at any time any and all of its benefits as they apply to all current, former, and retired employees, with or without notice.

All welfare and pension benefits provided by ABA are described in official plan documents which are kept on file in ABA office. These official plan documents are available for examination by any plan participant or beneficiary. In addition, the official plan documents are the only official and binding materials concerning ABA’s welfare and pension benefits. If there is any inconsistency between statements made in this manual regarding welfare and pension plans, and statements made in the official plan documents are legally controlling. The Administrator of each plan has the discretionary authority to determine eligibility for benefits and to interpret the plan’s terms.

Vacations

The Association currently provides paid vacation leave to full-time and regular part-time employees. Vacation time, which is earned using an employee’s anniversary date of employment, is earned as follows:

For full-time employees:

<i>Vacation Time</i>	<i>Period of Employment</i>
5 working daysAfter six months of employment (1 week)	
10 working days After one year of employment (2 weeks)	
15 working daysAfter three years of employment (3 weeks)	
20 working daysAfter 10 years of employment (4 weeks)	

For regular part-time employees:

(A working day equals a maximum of 4 hours per day.)
 2 working daysAfter six months of employment

- 5 working days After one year of employment
- 7 working daysAfter three years of employment
- 10 working daysAfter 10 years of employment

Employees are not eligible for and do not accrue vacation pay during their first six months of employment. Also, for purposes of computing years of continuous service, unpaid time taken off (e.g., leaves of absence) may not be counted, depending upon the circumstances of the leave.

Any employee who takes vacation and terminates employment before vacation pay earned will be liable to the Association for any used accrued vacation pay which exceeds the policy, and such vacation pay may be deducted from the employee’s final paycheck. If an employee resigns or is terminated, he or she will be paid for any unused earned vacation except for termination for cause.

Vacation must be taken within the work year during which it is earned and may not be carried over, accumulated or accrued into the next work year. However there is a buy-back option for up to 5 days. This buyback option may be extended if the employee is not permitted to take vacation time due to the business needs of the Association.

Requests for vacation time must be submitted to the department director for prior approval. Employees may not be permitted to use their vacation time all at one time, if the Association deems such use detrimental to its operations. If a holiday falls during the vacation, an alternate day may be taken to compensate for the holiday. The Association reserves the right to deny requests for use of vacation time in its sole discretion.

Holidays

All regular full-time employees are currently entitled to ten paid holidays, in general the following:

New Year’s Day, Martin Luther King, Jr. Day, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.

Currently, regular part-time employees who are regularly scheduled to work at least 20 hours per week will be paid for 4 hours per day for the 10 paid holidays.

The Association reserves the right to eliminate or modify the paid holiday schedule or to require employees to work on holidays.

Sick Leave

All full-time employees are currently allowed 12 days paid sick leave per year, which can be carried over to a maximum of 60 days. Employees are eligible for paid sick leave only after 90 days of employment. No payment for unused accrued sick leave will be made should an employee resign or be terminated.

You must call the receptionist and your supervisor by 9:00 a.m. when you are out sick.

Personal Days

Full-time employees are currently entitled to three (3) paid personal days per year. Requests to take personal days must be approved in advance. Unused personal days may not be carried over to the next year. There will be no pay for unused accrued personal days if an employee resigns or is terminated.

Other Leaves of Absence

1. Leaves for Disabilities

Employees who have a disability covered by the Americans with Disabilities Act or other applicable law (including disabilities caused by pregnancy, child-birth or pregnancy-related conditions) may request an unpaid disability leave of absence for the duration of the disability. The Association may require medical certification of the need and expected duration of the leave, and may grant the leave if it would constitute a reasonable accommodation that would not cause an undue hardship. Employees who are granted such leave will be expected to give the Association periodic progress reports. Eligible employees on such leave may continue their health insurance coverage at their own cost during such leave, but Association benefits such as sick leave, vacations and holidays will not accrue during such leave.

Although the Association will attempt to reinstate the employee to the same or substantially similar job upon return from such a leave, such reinstatement cannot always be guaranteed. Before returning from such a leave, the Association may request medical certification that the employee is able to perform the essential functions of his or her position. An employee who fails to return from a disability leave as scheduled will be considered to have voluntarily quit.

2. Military Leave

Any military leave and re-instatement will be granted in accordance with the requirements of state and federal law.

3. Bereavement Leave

If there has been a death in your family, you need to contact your department director and the receptionist. Currently, the Association pays full time employees for up to five (5) consecutive calendar days off from work for bereavement leave for the death of a spouse, child or parent, and up to three (3) days for the death of a brother, sister, grandchild, grandparent, in-law, or domestic partner. For the death of someone who is not immediate family, one (1) day is permitted. You may use unused personal or vacation days or take time off without pay for additional days of bereavement.

4. Jury Duty

If you receive a jury summons, you need to inform your supervisor and notify the receptionist of your absence. In appropriate cases and in accordance with applicable law, ABA may require your cooperation in obtaining postponement of such service.

You are generally expected to work any portion of your normal working day that is not required to fulfill your court obligation. Employees are currently eligible for paid time off for jury duty once they have been employed by ABA for at least one (1) year. If employees have not been employed at least one (1) year, the Association will pay an employee up to forty (40) dollars for each day of jury duty that falls on the employee's normally scheduled work day, for a maximum of three (3) days.

5. Family and Medical Leave

Inapplicable because there is a 50 employee minimum for application of the Act.

Employee Benefit Programs

The Association currently offers certain benefits to eligible employees, including medical, dental, life, and accidental death and dismemberment; a 401k Savings Plan; a simplified employee pension "SEP" program; and paid vacation leave. Eligibility for each benefit depends upon the specific requirements of each benefit plan. The Association reserves the right to modify or terminate at any time any and all of its benefits as they apply to all current, former, and retired employees, with or without notice.

All welfare and pension benefits provided by the Association are described in official plan documents which are kept on file in ABA office. These official plan documents are available for examination by any plan participant or beneficiary. In addition, the official plan documents are the only official and binding materials concerning the Association's welfare and pension benefits. If there is any inconsistency between statements made in this manual regarding welfare and pension plans, and statements made

in the official plan documents are legally controlling. The Administrator of each plan has the discretionary authority to determine eligibility for benefits and to interpret the plan's terms.

Continuation of Health Coverage ("COBRA")

Under the Consolidated Omnibus Budget Reconciliation Act (COBRA), employers sponsoring group health plans are required to offer employees and their families the opportunity for a temporary extension of health coverage (called continuation coverage) at group rates in certain instances where coverage under such plans would otherwise end, such as after termination of employment (for reasons other than gross misconduct on the employee's part), reduction in work hours, death of the employee, divorce, legal separation, eligibility for medicare, or loss of a child's dependency status (collectively, "triggering events"). COBRA coverage is at the rate charged to the Association, plus a small handling fee. Eligibility normally extends to eighteen (18) months from the date of the triggering event, but may be for a shorter or longer period, depending upon the circumstances.

The employee or employee's family member must inform the Personnel Administrator of a divorce, legal separation, or child's loss of dependent status under the Association's group health insurance policy within sixty (60) days of the

change in status, or the date on which coverage would end under the policy due to the change in status, whichever comes later. If notice is not received within the applicable period, the right to choose continuation coverage will be lost.

When the Personnel Administrator is notified of a qualifying event, such as employee death, termination of employment or reduction in hours, or Medicare entitlement, the Personnel Administrator should in turn notify the employee or the appropriate family member of the right to choose continuation coverage.

Under the law, employees or their covered family members have at least 60 days from the date they would lose coverage because of a triggering event to inform the Personnel Administrator that they want continuation coverage. If they do not choose continuation coverage, their group health insurance coverage will end.

If they choose continuation coverage, the Association is required to provide them with the opportunity to elect coverage which, as of the time coverage is being provided, is identical to the coverage provided under the plan to similarly situated employees or family members.

If you or your employees have any questions about COBRA, please contact the Association's Personnel Administrator.

Employee Responsibilities

Performance Appraisal Evaluations

Generally, each employee will periodically receive a written and oral review of his or her job performance. The purpose of this review is to provide a means of communication between the supervisor and each employee to talk frankly about job performance, strengths and weaknesses, and goals for the coming year.

Personnel Status

All employees must log in every morning on the Personnel Status System. Time sheets are also required for hourly employees and are due on Friday before pay week.

Attendance

Reliable attendance and punctuality is a critical aspect of your job. If a situation arises which makes it impossible to report for work, you should notify your supervisor or another member of management at least one (1) hour in advance of your reporting time. Please explain the reason for your absence and when you expect to return to work.

Any special requests for days off or time off should be made as far in advance as possible. In order to plan for your absence, at least one (1) week advance notice is preferable. The Association reserves the right to deny requests for time off in its sole discretion.

If you are aware of a future anticipated absence because of a personal situation, such as a required court date, jury duty, etc., notify the Association of such anticipated absence as soon as you learn about it so that we can plan for your absence. In appropriate cases and in accordance with applicable law, the Association may require your cooperation in obtaining postponement of jury duty or other commitments.

When planning a day or more out of the office, each employee must enter the information into the attendance status.

Telephone Calls

Our telephones are for business purposes and for this reason telephone calls of a personal nature are discouraged and should be kept to an absolute minimum during working time. Generally, our business lines should be used only in cases of emergency circumstances. Personal phone calls should be made during your lunch period, break or before or after work.

Smoking in the Workplace

Smoking is prohibited in any part of the building during or after working hours. This includes private offices, enclosed offices, hallways, restrooms, stairwells, conference rooms, etc. Anyone wishing to smoke must do so outside the building during approved non-work periods.

Personal Appearances

All staff should dress in a professional and businesslike manner.

Unauthorized Use of Association Property

All Association supplies and equipment have been purchased expressly for a business use. Any use of Association equipment for personal use or gain is strictly prohibited and may be grounds for disciplinary action up to and including immediate discharge.

Proprietary Information

As employees, you will making use of, acquiring or adding to the Association's confidential information. Proprietary information concerning the Association's operations must be kept confidential. Employees should not in any way utilize any confidential information, except in connection with their current position within the Association and the Association's behalf.

Conflicts of Interest

Employees are to maintain a high standard of ethical business practices in all Association operations. Activities or business interests, which jeopardize or conflict with the interests of the Association, are prohibited. To avoid any potential conflicts of interest, employees are prohibited from engaging in any outside activities or employment which may interfere with the effective performance of employee's Association responsibilities or which are not compatible with the Association's best interests. The Association should be notified immediately of any potential conflicts of interest.

Also, never place yourself or the Association in a position of obligation. For example, you should not accept gifts, loans, or monetary payments of any kind or amount from any customer, supplier or employee.

If you are unsure whether an activity may give rise to a conflict of interest, you should discuss the matter immediately with your supervisor.

Separation Policy

Corrective and/or Disciplinary Action

All Association personnel are expected at all times to meet performance standards, to conduct themselves in a positive and professional manner and to promote the best interests of the Association.

The Association generally endeavors to follow a progressive disciplinary and corrective action procedure to provide employees with notice of problems and an opportunity to improve. Steps in this progressive procedure may include any or all of the following, depending on the circumstances: verbal warnings and/or counseling, written warnings, probation, suspension without pay, demotion and/or termination. Whether to follow progressive disciplinary and corrective action procedures and the specific level of discipline or corrective action to be used in a particular case, however, remains in the Association's sole discretion. Although the discipline or corrective action often depends on an employee's work history, the nature of the problem and other relevant factors, the Association retains sole discretion to discharge an employee immediately if it believes it appropriate. Thus, the presence of a progressive disciplinary and corrective action procedure does not alter the at-will employment relationship at the Association.

Termination

All Association employees are employed on an at-will basis, which means that employment may be terminated by either the Association or the employee at any time, and for any reason, with or without notice or prior disciplinary or corrective action. This at will relationship may only be altered in a written employment contract signed by the Association's President.

Resignations

We request that employees give us sufficient advance notice (preferably 2 weeks) of their intention to resign to enable us to meet work and schedule commitments.

Complaint Procedure

In the normal operation of any organization, problems, questions, complaints and differences of opinion occasionally arise. The prompt and satisfactory resolution of these issues serves the best interests of both the Association and its employees. Thus, the Association encourages open discussion of problems and issues of concern to its employees. In most instances, an employee's immediate supervisor is best suited to help, but every level of management is open to help employees resolve problems or to

answer questions.

The Association can only help to resolve problems that are brought to its attention, however. Thus, should you feel that you are being treated unfairly, or that a problem is not being handled properly, or that you need a question answered, please use the following procedure:

1. First. If a problem arises, we urge you to have an open discussion with your immediate supervisor before the problem affects your work or your work atmosphere. Because time is of the essence in resolving workplace grievances, you should bring the matter to your supervisor's attention within 10 days of when the grievance arises.
2. Second. If you still believe that no satisfactory conclusion has been offered by your supervisor, you should write to the department head (supervisor's supervisor) explaining the nature of your problem. There is no special form to fill out – a brief note or letter will do. If the department head concludes that a meeting would be appropriate, you and others concerned may be asked to attend a meeting to discuss the problem.
3. Third. If your problem is not resolved to your satisfaction by the department head, you are encouraged to request a meeting with the Chief Executive Officer of the Association to discuss your problem.
 - If you believe that you have been harassed or discriminated against in violation of the Association's policies or applicable law, or have witnessed such harassment or discrimination, you may bypass these steps and notify the Association's designated EEO Coordinator or Chief Executive Officer directly. See the Association's Equal Employment Opportunity Policy and Policy Against Harassment for more details

While employees are strongly encouraged to use the grievance procedures discussed above, these procedures are not intended to create any contract between the Association and any employee concerning the procedures that will be followed in handling any employee concerns, including termination of employment.

General Policies

Change of Address or Status

The personal data you provide, particularly your address and telephone number is vital for many important personnel functions. Please be certain to notify your supervisor and Personnel Administrator of any change in your address or telephone number.

Changes such as marriage, divorce, and number of dependents should also be reported to the Personnel Administrator promptly as such changes may impact on payroll deductions and benefits.

Security

ABA demands honesty and integrity in the workplace. In this regard, employees may not remove any property from the premises without permission. Theft or misappropriation of Association or another person's property is a violation of our policy. Employees involved in such conduct will be subject to disciplinary action, up to and including immediate discharge, and prosecution to the full extent of the law.

The Association reserves the right to periodically search offices and desks and their contents when circumstances warrant. This right will be exercised when the search is determined to be necessary by the Association. The Association also reserves the right to search any articles leaving the premises

Building Safety

Placing chairs or furniture in lobbies or vestibules is strictly forbidden as it may violate egress requirements of the local fire code. Fire doors may NOT be propped open. This includes doors to the individual wings, the doors between upstairs and downstairs, and the doors between the warehouse and the mailroom. They are fire resistant doors and their purpose is negated by propping them open.

Access to Building

Most entrances to the office will be locked at all times; a security card is needed for access. Security cards are generally given to all employees when they join the Association. If your security card is lost, please see the office manager immediately. The cleaning service sets the alarm when they leave, around 7:30 p.m. If you will be working later than that, please tell them. When you leave, you will be responsible for setting the alarm. For weekends, please arrange with your supervisor or the office manager for disarming and setting the alarm.

Safety and Accidents

The Association makes every effort to maintain safe working conditions. The main responsibility for safety, however, lies with you. Immediately notify your supervisor of any unsafe conditions or practices. Should an unsafe condition or an accident occur, it must be reported to your supervisor as soon as possible, regardless of the nature or severity of the injury.

Bulletin Boards

ABA maintains a bulletin board for posting important work-related notices. The board should not be used to post unauthorized or non-work-related materials.

Solicitation and Distribution

Employees are prohibited from soliciting or being solicited for any cause during working time. No employee may distribute literature of any kind, which is not required by their job, during working time or in any working area of the Association. Solicitation and distribution on the premises at any time by non-employees is strictly prohibited.

Inclement Weather

In case of inclement weather conditions, please use your discretion in deciding whether it is feasible to come to work. Listen to the message on extension 550 for word of office closings. The Association requests that you call the receptionist or your supervisor if you anticipate being late or cannot come in.

Mail

There are bins located at the entrance to each wing for mail, UPS, and Airborne Express. All mail should be left in the bins for pickup. Mail is picked up daily. If you are doing a large mailing, please bind the envelopes together and place your department number on the first envelope.

Bulk Mailings

All bulk mailings need to be coordinated through the mail room. Two to four weeks notice should be given to make sure that all the necessary materials are on hand, and that there is enough money in the postage account.

Faxes

Incoming faxes to the main fax number are distributed to the mail boxes located near the receptionist's desk. Outgoing faxes are on a self-serve basis. See receptionist for assistance.

Kitchen

A refrigerator and microwave are available for use in the lunch room. Label items you put in the refrigerator with your name and date, and clean up after yourself.

Office Supplies

Requests for supplies should be sent in writing to the mailroom staff. For items that are not kept in regular inventory, see the mailroom staff for supply catalogs. Check with

your supervisor for approval and include the item number, page number, and description of the item on your written request.

Temporary Help

All requests for temporary subcontract personnel need approval from a department director.

Employee Suggestions

If you have an idea that you believe would improve customer or employee relations, please let us know. We want to hear from you. We urge you to contact any member of Association management about your ideas. If you have a complaint or grievance, please refer to our grievance procedure.

Travel/Expense Reports

Travel

All business travel requires prior approval by the chief executive director or a department director. All reasonable and necessary travel costs, hotel, meal, and incidental expenses incurred while on Association business will be reimbursed upon presentation of an appropriately itemized, documented expense report. Expense reports can be obtained from the Accounting manager or from Accounts payable.

- Receipts are required for items over \$25.
- Expense reports should be filed in a timely fashion (within two weeks after the trip is completed).
- Expense reports should be reviewed and approved by one's department director before submitting to the accounting department for processing.
- The Association reserves the right to refuse reimbursement for expenses or to require additional documentation for expenses.

Advances

Travel advances may be arranged with the department director's approval. Prior advances must be reconciled before any subsequent requests will be allowed.

Company Charge Card

The Chief Financial Officer must approve all requests for a company credit card. The monthly bills from this credit card must be checked by the user and approved by one's supervisor before submitting to accounting for payment.

Other Business-Related Expenses

All other business expenses require a department director's approval before the expenses are incurred. Proper documentation and receipts are required for all items. The Association reserves the right to refuse reimbursement for expenses or to require additional documentation for expenses.

Insurance

Employees traveling for business are generally covered by Travel Accident insurance.

General Equipment and Communications Policy

All tools, equipment, and services provided by the Association to facilitate the performance of work are considered the property of the company. This includes all electronic and telephonic systems and communications transmitted by, received from, or stored in these systems. Such equipment should be used SOLELY for Association business purposes. These systems may be monitored or accessed by authorized company personnel without notice.

Online Communications Policy

The Association, through the online communications network (Internet), allows its employees to communicate and share information among themselves and the public. In some cases, specific authorization is required to gain access.

Employees using Association resources to communicate across the Internet are representing the Association and shall refrain from posting personal statements that would reflect negatively on the association and from circulating confidential material belonging to the Association or others.

The Association's online communications services should not be used to solicit others for commercial ventures, religious or political causes, 'classified buy, sell, or trade messages,' or other non-job-related activities. It should not be used in ways that are disruptive, offensive to others, or harmful to morale. Examples of inappropriate communications include use of sexually explicit images, messages, and cartoons, as well as the use of ethnic slurs, racial epithets, or anything that may be construed as harassment or disparagement of others, or that would violate the Association's EEO or harassment policies..

NO EMPLOYEE SHOULD CONDUCT ANY PRIVATE BUSINESS USING ANY ONLINE ACCESS ACCOUNTS PAID FOR BY THE ASSOCIATION.

Employees are prohibited from installing software on their workstations without permission from the Information Services Department. It is essential that all software (executable programs) downloaded from the Internet are checked for viruses before being executed for the first time. This includes self-extracting files that have been compressed.

Employees' use of Internet services may be monitored at any time without advance notice.

E-mail is one of the most widely used features of the Association's online communications services. Management reserves the right to enter an employee's e-mail files for business purposes at any time without prior notice.

Given that the privacy of the e-mail system on any online service is not guaranteed, e-mail is NOT an appropriate tool for transmitting confidential messages.

It should be noted that 'deleted' messages may still be accessible through network backups and available at a later date for review by authorized parties. Such messages can be subpoenaed and have been used elsewhere in personal and corporate legal proceedings.

Security

The following precautions are necessary to ensure system security for the various on-line communications services:

- Each authorized e-mail user will be given a user ID which will be used to access the network database. User IDs will be assigned by the Information Services Department.
- ID requests for new and temporary employees must be approved by the Chief Financial Officer.
- Permission MUST be given by the ID recipient in order for another user to access the ID recipient's mailbox, except in connection with ABA authorized access.

In cases where a master account ID and password are needed to use an overhead account, permission must be granted by the Chief Financial Officer.

ID's and Passwords should not be given out to unauthorized persons. Passwords provide added security and should be used whenever the option is available.

To prevent unauthorized use, exit all online services when away from your workstation.

OSHA Ruling

Re: Occupational Safety and Health Administration (OSHA) rule. (Jan 16, 2001)

This memo is being sent to all ABA employees in compliance with OSHA's Ergonomic Programs Standard for 2001. This new Federal standard has been implemented to prevent and alleviate Musculoskeletal Disorders (MSDs) in the workplace. You may wish to attach this memo to your ABA employee's manual for future reference.

What is an MSD?

(From the U.S. Department of Labor)

An MSD is a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, blood vessels, or spinal discs. Workplace MSDs are caused by exposure to the following risk factors: repetition, force, awkward postures, contact stress, and vibration.

Although the OSHA Standard covers a wide range of potential MSDs, ABA employees are most likely to be effected by those stemming from long-term computer work. These can include wrist, neck, and/or back strain resulting from improper workstation ergonomics.

Prevention

1. All employees should ensure that their computer monitors are located at a comfortable viewing angle to prevent undue neck strain.
2. Keyboards/mice should be positioned comfortably at desk height. Gel-filled wrist rests and similar devices are available to alleviate wrist discomfort as well.
3. Adjust monitor brightness and contrast to provide comfortable viewing, and be sure to sit at a reasonable distance from the monitor. Glare-filters are also available if eye-strain results from long-term computer use.

Reporting Procedures

In the event that any ABA employee believes they are suffering from a workplace-related MSD or begins to show symptoms of an MSD, they should alert their supervisor immediately so steps can be taken to remove or alleviate the problem.

Disclosure Regarding Conflicts of Interest

As an ABA staff member at the level of Director or above, or a staff member with direct responsibility for material purchasing decisions on behalf of the association, I recognize that I owe duties of care and loyalty to the association. One aspect of fulfilling those duties is to avoid conflicts of interest in which my allegiance might be split between an association position and responsibility and some other professional, business, or volunteer position or responsibility. To help avoid conflicts, on this form I am disclosing other situations or areas in which it might even appear that I have conflicting duties to other entities. I invite any further review by the CEO of any aspects of these situations or areas that might be considered appropriate. Also, I will take other steps, even withdrawing from my position in the association, if it is determined that those steps are necessary to protect against legal liability to the association or to me arising from conflicts of interest. As a staff member I understand that I may never enter into a relationship,

either paid or unpaid, with a vendor to ABA or any of its affiliates, or with any entity in any way involved in the publishing industry. I further understand that if I am to be engaged in a relationship, either paid or unpaid, with any member of ABA that I must disclose said relationship to the CEO by listing said relationship on this form. If said relationship arises after this form is signed, I will inform the CEO and amend this form appropriately. I also understand that relationships formed with individuals or entities not within the categories mentioned above and undertaken on my own time, outside of normal business hours, do not present potential conflict of interest situations and need not be revealed. Finally, I understand that it is improper to accept gifts, payments, and honorariums of a material nature from any party who would be covered by the disclosure provisions of this policy. For purposes of this policy material is defined as a gift, payment, or honorarium of over \$100 in value.

1. Professional, business, or volunteer positions or responsibilities that might give rise to conflicts:

2. Situations in which I am serving as a vendor, or am employed by or consulting with a vendor, to the association or its members: _____

I know of no professional, business, or volunteer position or responsibility, including vendor situation, that might give rise to conflicts.

SIGNATURE

DATE

American Booksellers Association “Whistleblower” Policy

The American Booksellers Association (ABA), and its affiliated organizations are open and accountable to their members and their employees. The ABA Board of Directors encourages all employees of ABA to act ethically and to report honestly to their supervisors and, when appropriate, to legal counsel and the Boards of Directors on any conduct or activity which they perceive to be contrary to the policies or ethics of ABA or its affiliated organizations. ABA is committed to compliance with all laws and regulations to which it is subject, and to acting in all ways appropriate for organizations operating with the highest ethical standards. To that end, the ABA Board of Directors adopts this policy regarding the reporting by employees of any activity which they perceive to potentially violate law, policy or ethical standards.

This policy is intended to cover serious concerns that could have an impact on ABA, such as actions that could lead to incorrect financial reporting, are unlawful, are inconsistent with announced policies or procedures, or otherwise amount to serious improper conduct. The policy is intended to encourage and enable employees and others to raise serious concerns within ABA prior to seeking resolution outside of ABA. Such conduct could include questionable accounting reports or internal controls, unethical business conduct, concerns about employee health risks, sexual harassment or discrimination on the basis of race, gender, sexual preference, religion, or handicap. Every effort will be made to protect the confidentiality of any complainant, and harassment or retaliation of any sort against any complainant will not be tolerated. While anonymous complaints will be accepted, employees are encouraged to identify themselves in order to increase the credibility of the complaint and to facilitate follow-up investigation. Malicious or knowingly false allegations, however, may result in disciplinary action.

If feasible, employees are encouraged to present their complaint initially to their supervisor, or to the Chief Operating Officer. In most cases, an employee’s supervisor is in the best position to address an area of concern. However, if an employee is not comfortable speaking with his or her supervisor, or if he or she is not satisfied with the supervisor’s response, employees are encouraged to speak with the Chief Operating Officer or any-

one in management whom the employee is comfortable approaching. Supervisors and managers are required to report suspected violations made under this policy to the Chief Operating Officer, who has specific and exclusive responsibility to investigate all reported violations. If the employee is uncomfortable with presenting the complaint internally, the employee should contact ABA’s outside general counsel, Deanne Ottaviano at 202-775-5781. While the employee is not expected to prove the truth of the allegation, the employee should be prepared to be interviewed (unless the complaint is anonymous) and to submit whatever evidence is available in support of the allegation.

The action taken will, of course, be dependent on the nature of the concern. However, a prompt investigation will be conducted by the Chief Operating Officer and/or legal counsel, while maintaining the confidentiality of the complainant. To the extent possible, the complainant’s report will be acknowledged within five business days and the complainant will be notified in no more than two weeks if a broader investigation appears to be appropriate, and the form it will take. Some concerns may be resolved without the need for further investigation. If a fuller investigation is deemed appropriate, it will be conducted promptly, at no cost to the complainant. A written report, including recommendations, will be submitted to the complainant, and, as appropriate, to the senior management and/or the Board of Directors. Where warranted and appropriate, corrective action will be taken. This may include, depending on the severity of the activity, a warning, letter or reprimand, suspension with or without pay, or termination of employment.

Any questions regarding this policy may be submitted either to the Chief Operating Officer or to ABA’s outside general counsel.

Acknowledgement of Receipt of ABA's Employee Manual

I have received and read the ABA's Employee Manual. I understand the procedures, rules and regulations set forth in the Manual only summarize ABA's current policies and procedures, and that ABA may modify, supplement or rescind them at any time, without notice, in its sole and absolute discretion.

I understand that I am employed at will, which means that either I or ABA may terminate my employment for any reason, at any time, with or without notice.

Furthermore, I understand that this Manual is not a contract of employment nor do its policies or procedures create contractual obligations of any kind. I understand that I cannot have any contract concerning the length or other terms or conditions of my employment at ABA unless I have a written contract expressly setting forth such length or other terms and conditions signed by both me and the Association's president.

Employee _____ Date _____

Personnel _____ Date _____

Record Retention Policy

(Revised 6/06)

TYPE OF DOCUMENT	REQUIREMENT
Accounts payable ledgers and schedules.....	7 years
Audit reports	Permanently
Bank reconciliations	2 years
Bank statements	3 years
Checks (for important payments & purchases)	Permanently
Contracts, mortgages, notes and leases(expired).....	7 years
Contracts (still in effect).....	Permanently
Correspondence (general).....	2 years
Correspondence (with customers and vendors).....	2 years
Deeds, mortgages, and bills of sales.....	Permanently
Depreciation schedules	Permanently
Duplicate deposit slips.....	2 years
Employment applications	3 years
Expense Analyses/expense distribution schedules	7 years
Year End financial statements.....	Permanently
Insurance policies (expired).....	3 years
Insurance records, current accident reports, Claims, policies, etc.....	Permanently
Internal audit reports.....	3 years
Inventories of products, materials, and supplies	7 years
Invoices (to customers, from vendors).....	7 years
Minute books, bylaws and charter.....	Permanently
Patents and related papers.....	Permanently
Payroll records and summaries.....	7 years
Personnel files (terminated employees).....	7 years
Retirement and pension records	Permanently
Tax returns and worksheets	Permanently
Timesheets	7 years
Trademark registrations and copyrights	Permanently
Withholding tax statement.....	7 years

Membership Information

The American Booksellers Association, founded in 1900, is the national trade association of retail booksellers in the United States. ABA is bookselling's state-of-the-art source for education, advocacy, and services to boost profits, cut costs, and generate sales. You'll find a wealth of information and resources on our Web site www.BookWeb.org, where you can network with other booksellers by using our Idea Exchange or ask ABA questions about the things that matter most to your business. Get breaking news from *Bookselling This Week*, delivered directly via e-mail, and stay informed by checking <http://news.bookweb.org> for the latest industry reports.

ABA provides a wide range of educational opportunities for booksellers at its annual convention, held in conjunction with BookExpo America; at regional trade shows; and at other venues throughout the year. In addition, ABA is the strong voice of booksellers to the industry, the government, and the public.

ABA members have access to a wide range of business management services, including casualty and property insurance, credit card processing, freight programs, group buying programs, and more. The savings you may realize from these business services can substantially offset your ABA membership dues. You can't lose when you take advantage of these programs and choose ABA as a partner!

Below are brief descriptions of the some of the benefits of ABA membership:

Regular members (any business engaged in the retail sale of books; annual dues \$350+) have access to the most current publisher terms via the *ABA Book Buyer's Handbook*, which is continuously updated online; the members-only portion of www.BookWeb.org; and member registration rates at BookExpo America, held in conjunction with the annual ABA Convention. Regular members have voting rights and have the opportunity to be involved in a bookseller-driven organization. Storefront bookstores that meet certain criteria are eligible to participate in BOOK SENSE™ Independent Bookstores for Independent Minds—a national marketing and branding program.

Provisional members (individuals planning to open a bookstore; annual dues \$350) have access to the most current publisher terms via the *ABA Book Buyer's Handbook*, which is continuously updated online; the members-only portion of www.BookWeb.org; and member registration rates at BookExpo America, held in conjunction with the annual ABA Convention.

Associate members (Publishers, distributors, wholesalers, and other vendors; annual dues \$350) have access to the *ABA Book Buyer's Handbook*, continuously updated online with the added feature to self-edit listings. The opportunity to purchase LIBRIS Liability Insurance designed exclusively for book publishers. Member rates on rentals of ABA mailing lists and some advertising vehicles, such as Advance Access to stores with Book Sense.

Auxiliary members (Individuals and/or other businesses wanting to support independent bookselling; annual dues \$200) are entitled to limited membership benefits and business management services.

American Booksellers Association
200 White Plains Road
Tarrytown, NY 10591
1-800-637-0037 or 1-914-591-2665
Fax: 1-914-591-2720
E-mail: info@bookweb.org
www.BookWeb.org

Investment Policy Statement
For
The American Booksellers Association

Adopted: July 2001

Revised: July 2003

Revised: May 2004

Revised: January 2006

*For Full Investment Policy Statement, go to
<http://www.bookweb.org/docs/bookstores/aboutaba/06INVEST.pdf>*

Policy Posting of Financial and Governance Documents

The following documents shall be posted and maintained in a clearly identified section of BookWeb.org. The posting shall be accomplished as quickly as is reasonable after the acceptance by the Board of Directors of the particular document in question.

1. Three-year's consolidated, audited financial statements of ABA and all subsidiaries
2. The current IRS Form 990 federal income tax return for ABA, with a link to prior years' returns
3. The current Strategic Plan, including goals, objectives, and strategies
4. The ABA Policy Manual, including additions and amendments
5. The ABA Bylaws

Index

	<u>Section/Page</u>
Bylaws	1-1
Governance Process Policies	2-1
Board/CEO Linkage Policies	2-4
Advisory Bodies:	
Resolution Submitted by the Task Force on Advisory Bodies (1/99)	2-6
Mission, Goals, and Roles of Procedure for ABA Advisory Bodies (1/99)	2-6
Resolution on ABA Booksellers Advisory Council (BAC) (7/02)	2-7
Audit Committee Report for Fiscal Year 2000	2-8
Appendix A: Audit committee Interview Guide and Average Responses	2-12
Appendix B: Resulting Recommendations and Actions	2-14
Governance Review Committee Objectives and Methodology	2-16
Governance Review Committee Report for Fiscal Year 2001	2-17
Appendix A: Survey Questions and Responses	2-20
Governance Review Committee Report for Fiscal Year 2002	2-22
Appendix A: Survey Questions and Responses	2-25
Governance Review Committee Report for Fiscal Year 2003	2-27
Appendix A: Survey Questions and Responses	2-30
Governance Review Committee Report for Fiscal Year 2004	2-33
Appendix A: Survey Questions and Responses	2-36
Governance Review Committee Report for Fiscal Year 2005	2-39
Appendix A: Survey Questions and Responses	2-43
Audit Committee Guidelines	2-46
Executive Limitations Policies	3-1
Nomination and Election Guidelines	4-1
Conflict of Interest—Statement of Policy	5-1
Disclosure Regarding Conflicts of Interest	5-2
Confidentiality—Statement of Policy	5-3
Non-Disclosure Agreement	5-4
Board of Directors Attendance Policy	5-5
Board Orientation	5-6
Board/Member Communication Policy	5-7
The Fundamentals—Antitrust Statement	6-1
ASAE Antitrust Guide for Association Members	6-5
Board Expenses and Procedures	7-1
Personnel Policies and Procedure Manual	8
History of ABA	8-1
Employment Practices	8-2
Pay Provisions	8-4
Employee Benefits	8-5
Employee Responsibilities	8-8
Separation Policy	8-9
General Policies	8-10
Travel/Expense Reports	8-11
General Equipment and Communications Policy	8-12
OSHA Ruling	8-13
Disclosure Regarding Conflicts of Interest	8-14
“Whistleblower” Policy	8-15
Acknowledgment of Receipt of ABA’s Employee Manual	8-16
Record Retention Policy	9-1
Membership Categories and Dues	10-1
Investment Policy Statement	11-1
