MARKS PANETH

ACCOUNTANTS & ADVISORS

NONPROFIT AGENDAS DECEMBER 2014: STRATEGIES AND SOLUTIONS FOR CONTINUING TO GROW YOUR NONPROFIT ORGANIZATION

WHAT IS YOUR BIGGEST WORRY? WE WANT YOUR INPUT

Our *Nonprofit Pulse: Leadership Survey* has launched and we are seeking your candid (and confidential) input and perspective. The survey is targeted to chairpersons, presidents, treasurers, CEOs, executive directors, CFOs and development directors and aims to take the pulse of the nonprofit community – issues, attitudes and perceptions. Please take a moment now to complete the study's questionnaire here. We look forward to sharing the results of the survey with you soon.

DON’T CRY “WOLF!” BUT TAKE ACTION: WHAT TO DO IF AN EMPLOYEE IS SUSPECTED OF FRAUD

It can happen to any organization: Someone calls your whistleblower hotline and says they have information incriminating a member of your staff in a fraudulent act. Or, one of your bookkeepers contacts the Board Chairman to tell them that they think the executive director is embezzling the organization’s funds.

Proceed quickly, but carefully

What you *don’t* want to do when you first suspect wrongdoing is throw your arms in the air, yell “Fraud!” and go into panic mode. What you *do* want to do is think rationally and take fast, but careful, actions.

***Consult your fraud policy*.** Your nonprofit should have a policy that will guide you in handling the suspected fraud. The course of action will, of course, depend on the details: who’s involved, what type of fraud may have taken place, and any other particulars that can shed light on the situation.

***Involve the Board*.** Assuming it is an employee who is suspected of fraud, the chief executive, president should immediately notify the Board of the suspected theft or embezzlement, and together they should decide how to proceed. Fraud can never be ignored — part of the Board’s fiduciary duty is to ensure the financial health of the organization. Contacting the media or answering their questions is also best handled by the Board. Additionally, your not-for-profit whistleblower policy will likely require an investigation. The Board may decide to do a preliminary investigation into the allegations before launching a full investigation.

Seek legal counsel**.** Contact your attorney right away. And consider retaining an employment attorney if a full investigation is launched — the employee's rights must be taken into consideration throughout the investigation and subsequent disposition of the matter.

Preserve the evidence**.** Documentation will be key during the investigation. One of the first things your Board should do is preserve the evidence — for example, by making copies of accounting or bookkeeping records as of the date the suspected fraud was discovered. Your CPA can assist you in this process. Consult with an attorney and qualified forensic expert to arrange for an image of any organizational hard drives to protect potentially incriminating data and prevent exploitation.

Contact the police**.** At some point in the investigation — often when the suspected fraud is first substantiated —the Board may decide to take the step of filing a police report or presenting the issues to the District Attorney's office. Insurance companies frequently require a police report to be filed as a prerequisite to later claiming recovery for a loss.

Consider getting further expertise**.** If the fraud is complex or longstanding — for example, in a complicated embezzlement scheme — the Board should consider hiring a Certified Fraud Examiner or qualified forensic accountant to determine how much has been stolen.

Confront the suspect**.** Often it's the Board Chair, along with a second leader of the organization, who will confront the alleged fraudster with initial proof of wrongdoing. It's important to hear, and document, the suspected employee's side of the story. Consult with legal experts and a forensic accountant if other interviews should be arranged as a way of building evidence towards a strong case against the suspected target of a fraud scheme.

Investigate carefully**.** Was the fraud discovered by the nonprofit's executive director? If so, he or she — or the top human resources manager — is the likely person to lead the investigation. But the Board will need to handle the investigation if the suspected employee is the executive director. Whoever is leading the investigation must work in the best interest of the nonprofit while demonstrating "informed and independent" judgment. An experienced employment attorney will be able to offer guidance through the various investigative stages.

Report and prosecute**.** Your organization may choose to report the suspected fraud and keep them abreast of the investigation. This step should be taken following due consideration of the materiality of the suspected fraud, the credibility of the evidence and the potential negative ramifications on the organization such reporting may cause. The Board, under advisement from your attorney, will decide whether to seek criminal damages and prosecute the employee who violated your trust, seek only a civil remedy or seek an admission and voluntary agreement for restitution. The IRS also requires an explanation on Form 990 of any "significant diversion" of the organization's assets amounting to more than $250,000 or 5% of assets or revenues. Further, there are various excise tax penalties levied on those who embezzle funds from nonprofits as well as on those in positions of oversight of the miscreants. Such reporting can add complications to the process of uncovering and reporting frauds.

Learn from the events The Board and top management should get to the root of what enabled the fraud to take place. Where were the blind spots? What new controls should be initiated? How can further fraud be deterred?

A touchy subject

Fraud is a touchy subject at nonprofits, which typically have "identities" linked to good deeds and intentions. But if fraud rears its ugly head at your organization, be prepared to show your community or, at least, the workforce, that it won't be tolerated.

When it comes to fraud, did you know . . . ?

The recently released Association of Certified Fraud Examiners' 2014 *Report to the Nations on Occupational Fraud and Abuse* provides insight into the nature and impact of frauds committed in the past biennial period:

Median loss**.** The median loss caused by frauds in the study was $145,000. Additionally, 22% of the cases involved losses of at least $1 million. The smallest organizations tended to suffer disproportionately large losses.

Median duration**.** A length of 18 months was the median amount of time from when the fraud was initiated until it was detected.

Detection methods**.** More than 40% of all cases were detected by a tip. That's more than double the rate of any other detection method. And organizations with hotlines were much more likely to catch fraud by a tip.

FINANCIAL STATEMENTS: YOUR NONPROFIT'S "FAMILY ALBUM"

What do you do with your financial statements, once you've posted them on your website as a show of your nonprofit's transparency? Financial statements are jam-packed with important information about your organization. So make sure you understand and use them.

A history of your financial past

Think of audited financial statements as a family album, providing a history of your nonprofit's financial past. Examining that past can help you better manage your organization now and in the months and years ahead.

To glean meaningful insights from these documents, you need to understand what each statement represents. Take it a step further, and you (or the Board members) can use the data to create a trend analysis, an industry comparison or a projection of upcoming challenges. Such tools can springboard your organization to making better-informed decisions.

Each statement's "reason for being"

Being able to use the information in basic financial statements to strategize for your organization starts with understanding the statements' purpose and components:

Your nonprofit's *Statement of Financial Position* lists its assets (what you own), liabilities (what you owe) and net assets (assets the organization has after all liabilities are paid). It's a snapshot of your nonprofit's financial health on a given date — usually the end of a month, quarter or year.

The *Statement of Activities* details the revenue and support your organization is bringing in and the expenses it's incurring for a time period ending on a specific date: for example, "the year ending Dec. 31, 2013." This is also the date of the statement of financial position. The statement of activities typically summarizes funds coming in by type of revenue and support, such as fees and service contracts, grants and contributions, and investment income. The statement also summarizes expenses — typically under the categories of programs, management and general, and fundraising.

The *Statement of Functional Expenses* displays a chart of expenses for the same period as the statement of activities, listing expenses in classifications down the page, such as salaries, rent and professional fees. Columns across the page — typically program, management and general, fundraising and total — group each expense into the function that received the benefit of the expense.

The *Statement of Cash Flows* presents the impact of the nonprofit's activities on cash for the same period as that of the statements of activities and functional expenses. It segments cash coming in and going out into operating, investing and financing categories.

Last, there are the *notes to the financial statements*. These remarks explain the nonprofit's accounting policies and information about certain balances presented in the statements. Details on the activity in endowment funds and information on temporarily restricted net assets are, for example, given in the footnotes. They also include details about summarized line items, such as the allowance or discount included in long-term pledges receivable.

Comparison with your budget

It's critical that your nonprofit perform monthly comparisons of the organization's financial results to its corresponding budget. Most financial software programs allow the budget to be entered per month and produce statements that compare *actual* results to what was budgeted.

Make it a policy to investigate any variances greater than a certain dollar amount or percentage. A smaller organization might, for instance, base the dollar amount on the amount used in its check-signing policy. A percentage of 5% to 10% variance is often used as the rule of thumb. This allows you to properly oversee and assess operations in a timely way, and evaluate the performance of individual programs and departments.

Planning for the future

Planning for the near future is critical in today's lean economy. You can compare *actual* monthly results through the most recent month, and add *future budgeted* monthly amounts to prepare a forecast of the full-year results. This "best guess" of what will happen to the organization in financial terms over a given period of time may indicate the need to find more revenue and support and cut back spending. Or you may find just enough resources to buy new technology. Basically, the comparison will indicate whether you're on track with your original budget or if it should be revised.

A similar model can be used to prepare a cash-flow projection. This is useful for nonprofits with cyclical cash needs during the year. The projection can help you plan properly and make good investment decisions. If it shows you have excess cash in December, for example, but will need to use the cash in May, invest the cash in such a way that it can be available at the later time.

A barometer on how you're doing

Financial information should be used to evaluate the organization's effectiveness in meeting its mission. Monitoring program information from detailed financial records can help determine whether you're accomplishing specific goals.

If your current year's objective is to increase membership from 1,500 to 1,800, for example, examine the total membership fees collected and monitor the progress toward your goal. If you need $2 million to build your new facility, use the monthly statement of activities to monitor pledges and develop a detailed listing of pledges receivable to monitor donor payments.

A tool for your future

Comparing your annual results with those of other nonprofits in your industry — or benchmarking against industry statistics — can help identify your organization's strengths or weaknesses. And this can lead to spotting growth opportunities or reallocating resources. Apply these same ratios over several years and you'll have the basis for long-range strategic planning and better use of money and resources.

Don’t let it go to waste

Your organization’s accounting staff, management and leaders have put in countless hours recording data for your financial statements and checking their accuracy. Make sure you put this information to good use as you plan your nonprofit’s future.

AFFORDABLE CARE ACT “PLAY OR PAY” RULES KICK IN

Is your nonprofit ready to comply with Affordable Care Act (ACA) requirements that take effect in 2015? If you’re an “applicable large employer” — generally those employers (nonprofit and private) with an equivalent of 50 or more full-time employees — you’ll be subject to the employer shared responsibility provision, or “play or pay” rules, starting Jan. 1.

Under the ACA, a large employer is one with at least 50 full-time employees or a combination of full- and part-time employees equivalent to at least 50 full-time employees. (For 2015, you may be eligible for transitional relief increasing that number to 100.)

Determining whether you’re a large employer involves totaling part-time employees’ monthly hours and dividing that figure by 120 to calculate your full-time equivalent employees (FTEs). That figure is added to the total number of actual full-time employees, generally those employed on average at least 30 hours a week, or 130 hours in a calendar month.

A penalty can be imposed on large employers that don’t offer “minimum essential” health care coverage to at least 95% of full-time employees (70% in 2015) — or that offer coverage that isn’t “affordable” or doesn’t provide at least “minimum value.”

The penalty applies only if one or more of the nonprofit’s full-timers receive a premium tax credit for a qualified health plan through a state or federal health insurance marketplace. If the employer doesn’t offer minimum essential coverage, the penalty is $2,000 per year per full-time employee in excess of 30 full-time employees (80 in 2015). The monthly amount owed is capped at 1/12 of $2,000 times the number of full-time employees over 30 employees (over 80 in 2015). If minimum essential coverage is offered but it isn’t affordable or doesn’t provide minimum value, that same penalty applies or, if less, a penalty of $3,000 per full-timer receiving a premium tax credit.

Contact your CPA for further information on this and other ACA requirements for 2015, including the transitional relief provisions.

NEWS FOR NONPROFITS: CONSIDER THE SUCCESS OF THE ALS “ICE BUCKET CHALLENGE”

The ALS Association reported that it raised more than $100 million during a 30-day period, largely as a result of its summer “Ice Bucket Challenge.” According to the nonprofit’s website, it received $100.9 million in donations from July 29 to Aug. 29 — quite a contrast to the $2.8 million in donations it received during the same period in 2013.

The nonprofit said that more than 3 million donors participated in the fundraising event in which celebrities ranging from Bill Gates and Bill Clinton to Oprah Winfrey and Charlie Sheen had a bucket of ice dumped on their heads while challenging video viewers to contribute to the ALS cause. The bulk of donations came in via mobile phones with donors using the hashtag #IceBucketChallenge.

The successful campaign underscores the value of using the “new media” in fundraising. It also raises the question of how to sustain new donor interest after a tremendous influx.

Suggestions for donor retention include: thanking donors profusely and keeping the public informed of how money is being spent, developing a Customer Relationship Management (CRM) program that identifies the best ways to connect with donors in the future, and continuing to use the influence of the celebrities who helped make the campaign a success.

Donor sues museum for allegedly missing matching funds deadline

A Florida resident is suing the John and Mable Ringling Museum of Art in Sarasota, and its stewards Florida State University and Florida State University Foundation, for the return of more than $6 million in gifts earmarked for a new wing to hold an Asian art collection from the same donor.

According to the complaint, the original 2006 agreement included a requirement to locate matching funds for the gift, but the defendants didn’t adhere to the agreed-upon timeline. Construction began last winter on the new wing, which is scheduled to open in early 2016, according to museum officials.

Small employee perks count

Nonprofits often can’t compete with for-profits in the salaries they offer employees. But you can look for employee activities that don’t cost a thing.
For example, start a book club. If participants want to get out of the office, hold the meetings in a coffee shop or restaurant with a quiet space for conversation.

Another idea: Recruit an employee to lead a morning or lunchtime exercise class. Morning classes can energize staffers for the day, and lunchtime classes take the emphasis off eating.

SPOTLIGHT ON MARKS PANETH

MARKS PANETH TO PRESENT AT THE NJCPA CONFERENCE

Rob Lyons, Tax Director, Exempt Organizations, will be giving two presentations at the nonprofit conference hosted by the New Jersey Society of CPAs (NJCPA). The conference will be held at Pines Manor in Edison, New Jersey on Thursday, December 4th. The agenda includes: grappling with a recovering economy, increasingly complex compliance and regulation responsibilities. Please click here for more information and to register.

CONSULTING FIRM SPECIALIZING IN INTERNATIONAL TRADE LITIGATION JOINS MARKS PANETH LLP

Marks Paneth LLP is pleased to announce that ITR LLC, a highly regarded Washington, DC, consulting firm specializing in international trade litigation, has joined the firm, effective October 1. ITR, which has FY 2014 revenues of approximately $5 million, has 12 staff including partners and principals. ITR's overall big-data mining, big-data analysis and other forensic capabilities, as well as its track record providing expert analysis and technical skills to assist clients as disparate as the European Commission, the Ministry of Commerce for the People's Republic of China and the Departamenta de Defesa Comercial in Brazil, will expand the services offered to our clients. Please click here to read more.

EB-5 VISA APPLICANTS NEED CAREFUL TAX PLANNING

The successful EB-5 visa program, created by the Immigration Act in 1990, has the potential to be a win win-win for investors, for US workers and for the US economy. But foreign nationals looking to invest at least $500,000 in order to qualify for an accelerated green card need to be prudent, says Alex Wang, partner in Marks Paneth's Tax Group, in a new article published in *The Metropolitan Corporate Counsel*. "Participation in the program comes with a price – having to manage a complex set of tax issues," Alex states in the article. And if these issues are not handled properly, the result could be disproportionate tax obligations and possibly compliance issues. Read Alex's article to learn more.

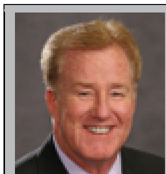
REAL ESTATE PARTNER FEATURED IN THE *NEW YORK REAL ESTATE JOURNAL*

Vivian Martinez, Partner at Marks Paneth LLP, was featured in the *New York Real Estate Journal* in the Women in Real Estate Spotlight section. She focuses on serving commercial and residential real estate clients as well as co-ops and low-income housing units. She is responsible for planning and supervising audit engagements and assists clients with many types of real estate transactions including acquisitions and dispositions. Please click here to read more.

TAX PRINCIPAL SPEAKS ON CLOUD COMPUTING: US TAX ISSUES

Alan Blecher, Principal at Marks Paneth LLP, participated in a panel on Cloud Computing: US Tax Issues on November 5th with the Fordham Law School Tax Affinity Group. He has experience serving high-income and high-net-worth individuals. He focuses especially on partnerships, limited liability companies and S corporations.

MEET OUR LEADERSHIP TEAM



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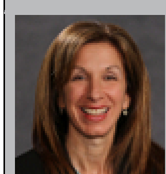

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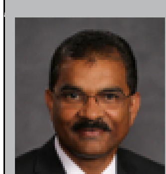

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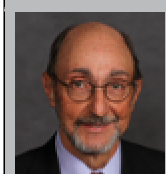

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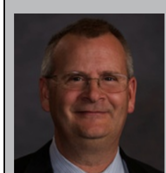

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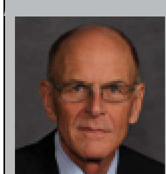

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If you have questions, please contact any member of the Nonprofit and Government Services leadership team listed above. In addition, more information on the Marks Paneth Nonprofit and Government Services Group, as well as all of the firm's services and industries, can be found at www.markspaneth.com.

HONORS AND AWARDS

Marks Paneth was again voted a 'Top Three Best Forensic Accounting Provider' in 2014 by readers of the *New York Law Journal*. Ours is the only firm to be ranked among the top three firms in the category of forensic accounting every year since the survey began in 2010.

About Marks Paneth

Marks Paneth LLP is a leading, regional professional services firm offering a wide range of accounting, auditing, tax, consulting, restructuring, bankruptcy and advisory services as well as litigation and corporate financial advisory services to domestic and international clients. Click here to learn more.

Any advice in this communication should be considered in the context of the services we are providing to you. Preliminary advice should not be relied upon and may be insufficient for penalty protection.

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