

Internal Communications to Port Employees on CEO Board Appointment

Vickie Rawlins, Workplace Responsibility Officer, addressed concerns raised in Washington State Legislators' letter.

9/4/2012 8:00 AM	Vickie	Legislative Letter	I made a few clarifying revisions this morning to my previous posting.
8/29/2012 10:00 AM	Vickie Rawlins	Legislative Letter	On Friday, August 24th, the chair of the State House of Representatives government operations and oversight committee, sent a letter to the Port of Seattle, signed by several other legislators, raising concerns about Tay's position on the board of Expeditors International. The letter raised two concerns:

(1) Ethics Concern: Tay's "dual employment" with Expeditors gives the appearance of a conflict of interest. The letter notes that Expeditors directs shipments for some of its customers through the Port, and asserts that Tay would be tempted and have the authority to provide Expeditors' customers with a competitive advantage. The letter concludes by asserting that Tay "has the power to prioritize his personal profit over the public mission of the taxpayer-supported Port of Seattle."

(2) Process Concern: The Commission did not publicly review or approve Tay's "outside employment" with Expeditors, leaving the decision to approve Tay's board service to a "subordinate" (i.e., the Port's General Counsel).

My response to the first concern is this: First, a correction: Tay is not an Expeditors employee. He is one of nine board members whose role is to represent shareholders' interests and provide strategic guidance. He has no role in Expeditors' day-to-day operations.

Second, Tay's board role does give him a direct personal financial interest in Expeditors. But this creates no improper financial conflict because Expeditors has no business relationship with the Port. If Expeditors or the Port were to consider establishing a business relationship, a conflict of interest would arise, and Tay would be required to recuse himself from any involvement in that discussion or any future activities concerning Expeditors.

Third, as an Expeditors' director, Tay is deemed also to have a financial interest in certain Expeditors' customers (those in which Expeditors has a creditor, debtor or ownership interest). This gives rise to a potential financial conflict, but does not pose an actual conflict because Tay is not now or in the foreseeable future in a position as the Port's CEO to provide Expeditors' customers with special privileges or a competitive advantage. This is because, as determined by the Port's general counsel, the Port neither has a business relationship with Expeditors' customers, nor the ability to influence whether or how Port-based terminal operators or shipping lines conduct business with Expeditors' customers (or with Expeditors itself). If Expeditors' customers and the Port were to consider establishing a business relationship, a conflict of interest would arise, and Tay would be required to recuse himself from any involvement in the situation. Tay would also be obligated to recuse himself from any future situation in which the Port found itself in a position to directly or indirectly influence whether or how Port-based terminal operators or shipping lines conducted business with Expeditors' customers (or with Expeditors itself).

Fourth, an appearance of a conflict arises when someone with the relevant facts could reasonably question another person's impartiality in an activity. The Port's general counsel determined that the relevant facts do not indicate that Tay's actions and decisions as the Port's CEO could be influenced by Expeditors' or his own financial interests. The legislators signing the letter have raised questions about Tay's impartiality, based at least in part on inaccurate facts (i.e., referring to Tay's board service as "dual employment"), so it is not clear that their concerns were based on the facts in this situation. However, I do believe the facts could have been communicated more effectively at the time Tay's appointment was announced, thus potentially preventing current ethics concerns. It is understandable that without knowing the all of the relevant facts in this situation, someone could reasonably question whether Tay's appointment could create a conflict. For this reason, and consistent with the Port's value of transparency, Tay should affirmatively offer to provide a clear description of his role and authority as CEO over those Port tenants and

business partners who also conduct business with Expeditors.

Commissioner Albro responded to the letter's second concern in a reply letter. He noted that Tay's employment contract was approved publicly by the commission on March 1, 2011 and posted on the port's website shortly thereafter. It provided that Tay could "on his own time participate as a member of a Board of Directors for a private entity; provided, that prior to accepting such appointment, the Port's General Counsel determined that CEO's participation would not create or appear to create a conflict of interest, or be contrary to any other provision of the Port's Code of Ethics for Employees." Albro said the appointment was then reviewed by the port's general counsel. Albro further noted that the commission president stated in public session on August 14, 2012 that Tay was in full compliance with the terms of his employment contract. Albro concluded by saying that as with any contract, Tay's continued compliance will be monitored through audits, including by the commission audit committee.