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Re: Strategic Governance Initiative

Dear APCO Board of Officers, Executive Council, and Members:

At several junctures over the last several months, I have been asked to provide my opinion regarding the revised governance structure and documents prepared by the Strategic Governance Initiative ("SGI") task force and refined by the input of the Executive Council, the past presidents, and the membership. I am now writing to recommend the final version for adoption at the 2008 Annual Conference.

As those of you who attended the mid-Winter meeting in Orlando earlier this year will recall, I outlined the reasons why Cobb Cole recommended significant changes to APCO's governance structure and governing documents. I am pleased to report that many of those issues have been addressed in the proposed governance reform.

There are essentially two interrelated issues that are being addressed by this package of initiatives. One is streamlining the governance structure. The other is streamlining the governance documents.

Cobb Cole has long recommended a restructuring of your governance board. At more than 50 members, the Executive Council is too unwieldy to act as the primary governance body. Much of the research in this area suggests that the primary governing body should be no larger than 15 members. In fact, the Senate Finance Committee recommended enacting a federal law a few years ago limiting the size of non-profit boards to no more than 15 individuals. There are several reasons for this.

First, each member of the primary governing body has fiduciary duties of care and loyalty to the organization. This means that each member must be informed, attentive, involved, and willing to put APCO above all else in carrying out his or her duties as a governing body member. Research establishes that as the number of members of a governing body increases, each individual member feels less responsible for the entity. As a result, some governing



members become inattentive or disengaged, resulting in members who are not meeting their fiduciary obligations. This is dangerous to both the individual and the organization. The individual is liable for decisions about which he or she is not properly informed and the organization is at the mercy of a governing body that is not meeting its fiduciary obligations.

Second, research into effective decision making also suggests a governing body of no more than 15 members. This enables the body to retain diverse viewpoints without creating an unwieldy decision making process. A smaller governing body can make decisions more quickly, permitting rapid decision making in a business environment that requires it.

Third, as we have previously discussed, we are concerned about the viability of an attorney-client privilege governing a body of more than 50 people. The privilege typically only covers key decision makers and while we may be able to argue that structurally, that is the Executive Council, I am not confident about the outcome of such an argument. If the attorney-client privilege is waived as to my or Bob Gurss' legal advice, then each of the Executive Council members would be open to discovery inquiries in litigation and personal identification as a defendant in certain types of litigation. In addition, my files and Mr. Gurss' would be open to inspection by hostile parties.

In light of the foregoing, we applaud the proposed governance structure which cuts your primary governance board, now called the Board of Directors<sup>1</sup>, to a significantly more manageable (but still regionally diverse) group of 14, including the Executive Director who is a non-voting member. The Board of Directors will be better positioned to engage in deep discussion of complex policy issues, and to act quickly as circumstances require.

We understand and respect the desire for every chapter to have a voice in APCO's governance. Every association should be so fortunate to have such an involved and committed membership. And we submit to you that this revised structure retains that focus while giving the organization the ability to act more efficiently and effectively. The Quorum retains ultimate decision making authority with respect to the membership policy, dues increases and amendment of the Bylaws. The Executive Council's role has been modified to one of high level policy making and acting as a conduit of information between the Board of Directors and the chapters.

In addition to the foregoing reforms to the governance structure, we recommend to you the initial revisions to the governance documents. Such documents should be as streamlined as possible as the governing body is imbued with the power to do whatever it deems to be in the best interests of the association unless it is prohibited by the law or the governing documents. By streamlining your governing documents to only those issues that you deem essential, you are granting your governing body the flexibility to take those steps necessary to keep APCO at the forefront of your industry.

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<sup>1</sup> On a side note, we commend the re-naming of the governing bodies to Board of Directors and Executive Committee. These are the common names for these types of governing entities among non-profits and utilizing these will make your governing structure more accessible to new members, funders, and others interested in APCO.

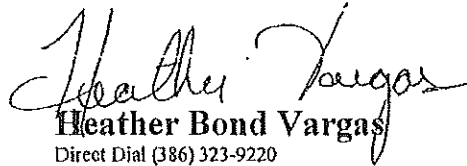


Additionally, the less you have in the governing documents, the less chance you have of running afoul of your own rules, exposing you to potential legal liability or simply an internal political mess.

Change of this magnitude is always difficult and takes extraordinary courage and vision. I am certain that you will be rewarded with a more nimble, effective, and ambitious association and I know that you are in a better legal position. Also, I must comment that I was quite impressed with the frank, honest, and well-informed discussion of your representatives throughout this process. All associations should be so well-served.

It is our privilege to be of counsel.

Sincerely,



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