



# New York Green Bank

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## Advisory Committee Charter, Conflicts & Confidentiality Policies

Version 2.0

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## Exhibit

Acknowledgement & Certification

## 1.0 Introduction

On February 18, 2014, NY Green Bank (“NYGB”) filed an initial organization plan (the “Organization Plan”) with the New York State Public Service Commission (the “PSC”). As part of the Organization Plan, NYGB undertook to “develop a written charter for its Advisory Committee members ... [formalizing] the members’ commitment to providing guidance to [NYGB], including expected activities, operations, other membership details, and compliance with the conflict of interest policy.” This document (the “Advisory Committee Charter”) is intended to build upon the framework outlined in the Organization Plan, including in particular, setting forth conflict of interest and confidentiality policies, and constitutes the written charter for the NYGB Advisory Committee (the “Advisory Committee”).

## 2.0 Authority

The PSC order providing initial capitalization of NYGB was issued and effective December 19, 2013 (the “PSC Order”) and provides that NYGB will establish an Advisory Committee to advise NYGB and the New York State Energy Research and Development Authority (“NYSERDA”). The PSC Order states that the Advisory Committee will exist purely to provide guidance to NYGB.

## 3.0 Purpose & Objectives

In order to achieve its goals and deliver on its mandate, NYGB will utilize the expertise and skills of its staff as well as those of professionals outside of the organization. The Advisory Committee will be established and maintained comprising a diverse group of senior professionals, prominent in their fields, which delivers guidance on an ongoing basis to the NYGB President and management team regarding matters pertinent to NYGB’s business including planning, strategy, business development, market intelligence, and product development. The recommendations of the Advisory Committee will not be binding, and may be considered by NYGB, the NYGB Investment & Risk Committee (“IRC”) and the NYSERDA Board, as applicable, in making decisions. The Advisory Committee will also be available to advise and consult with the NYGB President on other matters that arise during the development, establishment and ongoing implementation of NYGB’s strategy, structuring and operations.

## 4.0 Duration & Amendments

This Advisory Committee Charter will be effective when approved by the IRC and may be amended from time to time as the NYGB President deems necessary to accomplish the goals of NYGB and/or the Advisory Committee. All material amendments to this Advisory Committee Charter require the approval of the IRC.

## 5.0 Advisory Committee Formation

### 5.1 Members

The PSC Order states that in respect of the Advisory Committee: “NYSERDA and [NYGB] should ... have the freedom to determine its membership based on the qualifications they believe will be most helpful to meeting [NYGB’s] goals.” Consistent with this, NYGB will assemble a diverse group of individuals representing a range of backgrounds that may include energy and environmental issues (preferably focused on the clean energy sector), project development and finance, banking, capital/financial markets, portfolio management, new venture management/business development, utility and related infrastructure, engineering/technology and real estate. Members will be well recognized in their respective industries and possess significant experience and expertise. It is expected that there will be five (5) to seven (7) members of the Advisory Committee, although there is no stipulated minimum or maximum Advisory Committee size or quorum requirements. Advisory Committee members will serve for an initial term of two (2) years, which may be renewed by mutual agreement for successive additional terms of two (2) years.

## 5.2 Selection Process

The Advisory Committee members will be selected by the NYGB President. Candidates will be evaluated on their expected individual contribution as well as their expected contribution to the professional diversity of the group. The selected members will be reviewed and confirmed by NYSERDA's Chief Executive Officer.

Following review and confirmation by NYSERDA's Chief Executive Officer, the NYGB President will issue a formal invitation to selected potential Advisory Committee members from time to time, including a copy of this Advisory Committee Charter. An Advisory Committee member's appointment will be effective upon NYGB's receipt of his or her written acknowledgment of this Advisory Committee Charter, including an undertaking to be bound by the conflict of interest and confidentiality provisions.

## 6.0 Performance Expectations

The Advisory Committee will meet at least twice per year, or as often as deemed necessary by the NYGB President to best advise and inform NYGB on pertinent matters. Meetings will preferably be held in person, although video conference and/or telephonic participation will be permitted where a member is unable to attend in person. Advisory Committee members will be unpaid and will provide their time to NYGB on a voluntary basis. In order to keep NYSERDA apprised of Advisory Committee activity, updates will be provided periodically to the NYSERDA Board by NYGB, in accordance with the normal procedures of the NYSERDA Board.

With reasonable advance notice, the NYGB President will provide the Advisory Committee with an agenda for meetings. The agenda will include specific topics to be addressed, provide time for unstructured updates from Advisory Committee members, and may serve as a framework for reports to the NYSERDA Board about Advisory Committee activity.

During each meeting of the Advisory Committee, the NYGB President or designee will lead the discussion. A designated member of NYGB staff will take minutes during each meeting. This staff designee will record and maintain minutes of the Advisory Committee and certify to the accuracy of the minutes recorded. Additional attendees at Advisory Committee meetings may include the Chairman of NYSERDA, the President of NYSERDA, and various members of NYGB's staff, and invitees, as appropriate.

## 7.0 Conflict of Interest & Confidentiality Policies

### 7.1 Purpose

By definition, an Advisory Committee member's knowledge, contacts or interests, financial or otherwise, will be in fields directly relevant to NYGB and its business. It is therefore expected that some members may occasionally have business or personal interests that could give rise to a Conflict of Interest (as defined in [Section 7.2.1](#)). Accordingly, to maintain the integrity of the Advisory Committee, while permitting NYGB to avail itself of the members' respective expertise, all Advisory Committee members will be required to comply with the Conflict of Interest policy set out in [Section 7.2](#) (the "Conflicts Policy"). The Conflicts Policy requires that all Conflicts of Interest be disclosed; establishes a process for the determination of significance of the Conflict of Interest; and requires recusal of a member from any deliberations involving a matter in which a material Conflict of Interest has been determined to exist.

In addition, each Advisory Committee member is required to execute an acknowledgement of NYGB's confidentiality policy (the "Confidentiality Policy") and certify as part of his or her appointment that he/she will not use his or her position, or the Confidential Information (as defined in [Section 7.3](#)) obtained through membership on the Advisory Committee for his or her own personal benefit or the benefit of any other organization outside NYGB, or to further his or her own financial interests or the financial interests of other entities or persons.

NYGB's Conflicts Policy and Confidentiality Policy are set out respectively in [Section 7.2](#) and [Section 7.3](#).

## 7.2 Conflicts Policy

### 7.2.1 Conflicts of Interest Generally

A “**Conflict of Interest**” includes any known existing, potential, apparent or perceived conflict of interest that compromises or reasonably may appear to compromise the ability of a member of the Advisory Committee to render informed yet objective advice to NYGB with respect to a Business Relationship or other matter about which the Advisory Committee, or such member, has been asked to give advice. For example, a Conflict of Interest may arise when a member of the Advisory Committee or, to the knowledge of such member, his or her Close Relative, has or may have a Material Interest in a Business Relationship about which the NYGB has sought advice from the Advisory Committee or such member.

### 7.2.2 Definitions

For purposes of this Conflicts Policy:

- (a) “**Business Relationship**” means any actual or proposed contract, transaction, arrangement, or similar financial or commercial relationship between NYGB and any unaffiliated party, or between NYSERDA and any unaffiliated party regarding NYGB.
- (b) “**Close Relative**” means a spouse or domestic partner, brother or sister, parent (or parent of a spouse or domestic partner), child, or grandchild.
- (c) “**Compensation**” includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.
- (d) “**Material Interest**” means that an entity or a person or his or her Close Relative has, or may have, directly or indirectly:
  - (i) An ownership or investment interest constituting more than five percent (5%) of outstanding economic or voting interests in any publicly-traded company or any private company, with which NYGB has or contemplates initiating a Business Relationship, or in an entity that has a direct competing interest with, such Business Relationship or proposed Business Relationship;
  - (ii) An ownership or investment interest, which produces a significant amount of income for or constitutes a significant part of the net worth of that entity or person (including Close Relatives), in an entity with which NYGB has or contemplates initiating a Business Relationship, or in an entity that has a direct competing interest with, such Business Relationship or proposed Business Relationship;
  - (iii) An arrangement, whether for Compensation or otherwise, as an officer, director, manager, partner, contractor, consultant, advisor, or employee, or otherwise with any entity or individual with which NYGB has or contemplates initiating a Business Relationship, or in an entity that has a direct competing interest with, such Business Relationship or proposed Business Relationship; or
  - (iv) A potential ownership or investment interest in, or potential Compensation arrangement with, any entity or individual with which NYGB has or contemplates initiating a Business Relationship, or in an entity that has a direct competing interest with, such Business Relationship or Proposed Business Relationship.

### 7.2.3 Procedures

- (a) Voluntary Recusal. Any member of the Advisory Committee who deems that his or her interests or relationships present a Conflict of Interest may, at his or her discretion, recuse himself or herself from consideration of that subject matter.
- (b) Duty to Disclose. Each member of the Advisory Committee who has a Conflict of Interest regarding any matter under consideration by the Advisory Committee shall disclose the existence of such Conflict of Interest, and all material facts concerning the nature of his or her Conflict of Interest, to the NYGB President as soon as reasonably practicable upon learning of such conflict. The NYGB President will then consult with the NYGB Counsel.
- (c) Determining Whether a Substantial Conflict of Interest Exists. After the NYGB Counsel has reviewed the facts disclosed regarding any Conflict of Interest, the NYGB Counsel shall determine whether further discussion with the member is necessary regarding the significance of such Conflict of Interest with respect to the matter in question. At his or her discretion, the NYGB Counsel may submit the facts to NYSERDA's General Counsel for consultation. The NYGB Counsel will make a final determination of whether the circumstances rise to a material Conflict of Interest that could reasonably appear to interfere with the ability of the relevant Advisory Committee member to render unbiased advice to NYGB.
- (d) Corrective Measures. If the NYGB Counsel determines that a material Conflict of Interest exists, and the relevant member has not earlier voluntarily recused himself or herself from discussions regarding the relevant matter, the NYGB Counsel shall determine what corrective measures should be put in place with respect to the relevant member's participation in discussions, which may include a request that such member recuse himself or herself from all discussions of the Advisory Committee regarding that matter.
- (e) Violations of the Conflicts of Interest Policy. If the NYGB Counsel has reasonable cause to believe that a member of the Advisory Committee has failed to disclose a Conflict of Interest under this Advisory Committee Charter, he or she shall consult with the member and request additional information if needed. If, after such consultation and review of the relevant information, the NYGB Counsel determines that such member has in fact failed to disclose a Conflict of Interest, the NYGB Counsel shall advise the member and take other appropriate corrective measures.

### 7.3 Confidentiality Policy

Each member of the Advisory Committee shall protect the Confidential Information of NYGB, and shall not use such Confidential Information for his or her personal benefit or to the benefit of any entity in which such member or his or her Close Relative has a Material Interest, or use such Confidential Information or his or her position as a member of the Advisory Committee to his or her personal advantage and/or to the detriment of NYGB.

For purposes of this Confidentiality Policy, "**Confidential Information**" means confidential or proprietary information obtained through the member's position on the Advisory Committee (such as potential or actual transactions of the NYGB, actual and target clients and partners and interactions related thereto, internal plans, policies, preparation of public filings, etc.) to which he or she is or may become privy in the context of his or her service on the Advisory Committee; provided, that "Confidential Information" shall not include information that (a) has been or becomes publicly available, (b) was previously known to the member, (c) is independently developed by the member, (d) is required to be disclosed by law or regulation or by direction of a court or regulatory body, or (e) is received from a third party who, to the knowledge of the member, is entitled to disclose it.

Notwithstanding the foregoing, NYGB remains subject to the New York Freedom of Information Law ("FOIL"), and nothing in this policy should be construed to limit the obligations of NYGB under FOIL or any other laws of the State of New York.

#### 7.4 Acknowledgement & Certification

Each member of the Advisory Committee shall, as a condition to his or her appointment to such position, sign the attached acknowledgement and certification and return it to the NYGB President and NYGB Counsel as follows:

Alfred Griffin  
President  
New York Green Bank  
1359 Broadway, 19<sup>th</sup> Floor  
New York, NY 10018

Email: [alfred.griffin@greenbank.ny.gov](mailto:alfred.griffin@greenbank.ny.gov)

With a copy to:

Peter J. Costello  
Managing Director, Legal & Regulatory Affairs  
New York Green Bank  
1359 Broadway, 19<sup>th</sup> Floor  
New York, NY 10018

Email: [peter.costello@greenbank.ny.gov](mailto:peter.costello@greenbank.ny.gov)

**ACKNOWLEDGEMENT & CERTIFICATION**

**THE NEW YORK GREEN BANK ADVISORY COMMITTEE CHARTER AND  
CONFLICTS OF INTEREST & CONFIDENTIALITY POLICIES**

I hereby acknowledge that I have received a copy of the New York Green Bank Advisory Committee Charter and Conflicts & Confidentiality Policies (collectively, the “Advisory Committee Charter”), and that I have read, understood and will abide by such document.

I hereby agree to comply with the Advisory Committee Charter, and agree that I will promptly inform the President of New York Green Bank of any fact, situation, or circumstance that presents a Conflict of Interest under the Advisory Committee Charter.

I hereby certify that I will not use my position as a member of the Advisory Committee, or Confidential Information obtained through membership of the Advisory Committee:

- (a) For the benefit of myself, any Close Relative (as defined in the Advisory Committee Charter) or any other organization outside New York Green Bank;
- (b) To further my own financial interests, or the financial interests of any other entities or persons; or
- (c) Otherwise to the detriment of New York Green Bank.

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Date: \_\_\_\_\_