

THE UNIVERSITY OF NEW MEXICO  
Board of Regents' Audit and Compliance Committee Quarterly Meeting  
August 8, 2024 – Meeting Minutes

Members Present: Jack Fortner (Chair), Kim Rael

Other Attendees: Garnett Stokes, Douglas Ziedonis, Norma Allen, Susan Reimer, Terry Babbitt, Teresa Costantinidis, Angela Vigil (virtually), Scot Sauder, Ari Vazquez, James Holloway, Duane Arruti, Francie Cordova, Beck Rivera, Angela Catena, Emily Morelli, Victor Griego, Chien-chih Yeh, Jeremiah Sanchez, Amy O'Donnell.

Chair Fortner called the meeting to order at 8:32 AM. He confirmed there was a quorum.

**ACTION ITEMS:**

- The Committee approved the agenda.
- The Committee approved the minutes from the meeting of May 2, 2024.
- The Committee reviewed the next upcoming date of this committee, which was scheduled for October 23, 2024 to meet the needs of the external financial audit exit conference. Chair Fortner stated he now has a conflict. He asked that it be rescheduled to October 28, 2024, in the afternoon.
- The Committee unanimously approved the following audit reports from the August 7, 2024 executive session:
  - UNM Audit of Non-Standard Payments
  - UNM Fiscal Years 2025 and 2026 Internal Audit Plan
  - Sandoval Regional Medical Center – 72 Hour Rule Audit
  - UNM Medical Group – Dental Practice Coding Review
  - UNMH – Unclaimed Property Audit
  - UNMH – Infusion Pre-Authorization Audit

**INFORMATION ITEMS:**

- Advisors' comments: None.
- Victor Griego, Internal Audit Director provided his Director's Report to the Committee, confirming the Chair requested the change to the October meeting from the 23<sup>rd</sup> to the 28<sup>th</sup>. Internal Audit (IA) recently hired a student intern, Jeremiah Sanchez, who is assisting here with today's presentation. The department is planning on advertising for an auditor position very soon and will then be fully staffed. Chair Fortner asked Mr. Griego if auditors work remotely, or they all have to be on campus? Mr. Griego responded the staff is all on campus hybrid - a partial hybrid schedule in the office and partially remote. Everyone has office hours part of the week.

Internal Audit completed an internal training on June 27<sup>th</sup>. This will be an annual ongoing process with Mr. Griego and the Audit Manager providing training on standardizing internal auditing and investigation procedures. The training is also about standard procedures and reporting requirements to the Audit and Compliance Committee, the President, the State Auditor, and in some cases to law enforcement for identified criminal activity.

Chair Fortner stated he wants to send a letter to the (State) Auditor as Chair of this Committee regarding \$130,000 discussed in the closed session meeting the day prior. He knows the State Auditor and wants to make sure he follows up. When people realize that UNM is not just going to write it off, but is going to pursue it, that message will get out. He asked who has the case information. Mr. Griego responded he has it, and that's a good point to make. When Internal Audit has findings that could indicate criminal violations, the Department consults with legal counsel to get an official legal opinion. As auditors, they cannot make the determination of a criminal violation. The legal opinion is the support for reporting to the State Auditor and law enforcement. Chair Fortner asked Mr. Griego to send the information over to Scot Sauder, Interim General Counsel.

Mr. Griego provided the Committee with a recap of the FY24 internal audit plan. He mentioned previously in closed session that the Department shoots for 9 to 11 audits on the audit plan. The Department did hit the nine (9) audits for FY24. There were five (5) that were completed and presented. Three (3) are in planning or field work, and one (1) is assigned. The Audit of the Non-Standard Payment Process was presented in yesterday's closed session and approved earlier this morning. The Department has initiated planning procedures for the Anderson School of Management, education abroad programs, and IT disaster recovery. All these audits were on the FY24 audit plan and also on the IT risk assessment, which resulted in an IT audit plan as well.

Mr. Griego presented the budget to actual hours. The Department budgets between 200 and 600 hours for audits. Some audits are actually pretty complex, like the non-standard payment audit, which was University-wide for all aspects of non-standard payment processing. That one actually took about 1,000 hours. Large audits like that can require significant hours to complete. The audit of the Office of the Medical Investigator was a large, complex audit with a lot of audit procedures that had to be performed. It took about 800 hours. Overall, the budget for FY24 was 2,980 hours. The Department ended FY24 just a bit under at 2,818 hours.

Mr. Griego provided a status on Internal Audit Ethics Point complaints for FY24, and through July 31<sup>st</sup>, so part of FY25. There were 69 complaints assigned to the Department. These are anything that's financial related: allegations of misuse of funds, time reporting, grant management, etc. Of the 69, the Department completed and closed 30 cases. There are currently 34 that are open and under planning and procedures. Five (5) are unassigned.

For substantiated investigations or complaints, Internal Audit will issue a confidential report, which goes to management to address any recommendations or substantiated allegations. Those remain confidential unless they rise to the level of required reporting to the President and this Committee. The process is based on Regents' Policy 7.2, with factors such as if there's misuse of funds over \$20,000, high public interest, or criminal violations. Those are brought to the Committee's attention for presentation and discussion. Of the 30 cases that were closed for FY24, 14 were substantiated, and 16 were either not substantiated, or there wasn't enough information to perform additional procedures. A lot of times the complainants are anonymous. And in those cases, it makes it a little challenging to get additional information to conduct a review.

Internal auditing standards require the Internal Audit Director to report final budget-to-actual financial information to the Committee on an annual basis. For FY24, the final budget was 1.3 million, which primarily consisted of labor. The budget is about 97% for FY24 labor expenses, entirely from I&G funding. The Department did use about \$37,000 from reserves. Total expenses for the year were actually slightly less than the budgeted amount at 1.1 million. This resulted in a carryover in I&G funding, a direct result of a long vacant position. That position was filled by Antonio Baca who presented yesterday. The Department is posting another internal audit position, and when that auditor position is filled, will be fully staffed.

Chair Fortner asked what the Department does with carryover funds. Does the Department have to earmark them again? Mr. Griego replied that the Department follows Policy 7000 for the categorization of reserves. The Department is required to submit information to Shared Services for dedications or commitments it has for reserve funds. Internal Audit is intending to use some for required training and development, software and IT services. These are non-recurring funds. Committed reserves are if there's an established contract or purchase order. The FY25 adopted budget is a total of 1,437,000, and almost all of it is from I & G funds from the general pool. The Department did budget use of reserves for 111,000 from the reserve pool, for non-labor expenses such as IT, professional services, software maintenance, and professional development and training.

Mr. Griego is putting a focus on obtaining credentials, allowing staff the opportunity to advance their professional development with additional certifications. He just sent an auditor to get a certified fraud examiner certification. The training and development actually benefits the department to get more specialized skills for some of the areas that are audited or investigated.

Mr. Griego provided a quick briefing on the external financial audit. The external auditors are in the middle of fieldwork, and they're ready to wrap up the FY24 external audit. They will be presenting their audit for the October meeting for approval. Once that's approved, that'll be the second year of their two-year contract. There's an option for a third year.

The last thing is communication to the Committee that's required for the internal auditing standards. There are a couple of disclosures regarding ongoing monitoring and performance as part of routine activities of the Department. The Department will complete internal training on an annual basis, and then do quality control review to ensure that the work papers and reporting meets the internal auditing standards. That's on an ongoing basis. The Department ensures that all our staff are independent and objective in completing internal audits. There is a disclosure on an annual basis that there are no conflicts with the auditees for any auditors and that they're independent and objective in every project that they do. The final statement is just to ensure that internal audit does not believe that the Department has resource limitations to complete its audits and investigations.

Regent Rael asked about the process for deciding to exercise, or not, the third-year option on the external auditors. Norma Allen, University Controller explained they would get the constituents together, the component units, and discuss what they think. Then they would just work with the Procurement Office to go ahead and do the third year. They may have to bring it back to the Regents of this Committee for approval.

Francie Cordova, Chief Compliance Officer addressed the Committee, stating that she would typically have the enterprise data for Ethics Point to present today, but she doesn't because they only have one topic on the agenda. That is because they have been so singularly focused for the last couple of months on Title IX. Ms. Cordova stated she wanted to give a shout out, a thank you, and recognition of how much of a toll it really takes on universities for this political football that is now Title IX. There is a constant pendulum swing.

It first starts by slogging through however many thousands - in this case, it was 1,600 pages of regulations. That fully takes about a month to just digest with the entire nation. There are listening sessions and experts asking, "What's permissive? What are our decision points? What do we need as a campus?" They ultimately spent a lot of time thinking about how to structure the policies, and settled on 2740, the University sex discrimination policy for sexual misconduct, sexual assault, domestic violence, stating violence, and stalking. Policy 2720 is prohibited discrimination and other related misconduct, so everything else: race, religion, and then non-sex-based discrimination. They created a new pregnancy policy. They spent about a week debating at all hours of the night, sometimes at midnight, sometimes at five in the morning. "What does this policy actually say? Is this wrong? Is this right? Are we now not compliant with some other federal regulation such as Clery or Title VII?"

Behind the scenes, all the partners are kind of making that pivot. Their office has to change everything from the discrimination grievance process, to internal training and training of the investigators, to the website and templates. The advocates have to pivot because they're confidentially supporting all the people impacted by this. The police, threat assessment team, and disciplinary bodies have to pivot. They have to review all of that. Then the real work starts. The communication to the community starts. They started with the town hall that many people here at this meeting attended. Angela Catena, Title IX Coordinator did a great job of doing that with a large group of faculty, staff, and students. That's the start.

Staff are in every space they can be now - at the Deans Council recently, at new faculty orientation today, at UNM Gallup yesterday. They never want to forget the branches, so they are going to be at all the branches soon. The students are probably their most important constituent body, and they are coming back soon, so they will be doing a lot of communication with them. UNM is seen as the flagship of not just New Mexico, but really the flagship in this area, because UNM has gone through DOJ, and pivoted twice. When they are done training internal people, they will usually go to other universities in New Mexico to assist them. They held a summit for the last regulations and had many universities from the southwest and even the west coast who were at UNM to learn and listen.

Ms. Cordova gave a big shout out and thank you to everyone, including Provost Holloway, who was sitting in for the President, and Teresa (Costantinidis) had to endorse, and then Provost Holloway had to read all the Frankenstein policy to sign into an interim policy on August 1<sup>st</sup>. And 25 states enjoined; our state was not one. UNM was fortunate, in not being in that place where nobody knew what was happening one day to the next.

Chair Fortner asked if those were all enjoined at the federal court level. Ms. Cordova replied yes. The Chair then asked if any of them have gone up to the Court of Appeals, and does she expect them to? Ms. Cordova replied they do expect them to go up. They have not gone up officially that they have been notified about. They get the notices from the national organizations. They are primarily focused on the LGBTQ portions of Title IX. Our state already had those protections long before the federal laws did. New Mexico has a really strong state law, so they are not worried. Even if it happens nationally, UNM is still covered at the state level, therefore UNM is not as nervous as some campuses. Some campuses have locations in two states. In some states, the regulations were going into effect, and not in the other state. They actually have to have two sets of policies at the same time and have to figure out how to deal with that. UNM is fortunate, even if it doesn't feel that way.

Ms. Catena presented the Title IX information to the Committee. She stated that those who've been through this at least two or three times now – congratulations, you're an expert! Two years ago, the Department of Education (DOE) put out their proposed changes to Title IX and they finally got those in April of this year. Last year, the DOE put out a second set of proposed regulations, and those were guiding sex-separate sports participation. Those regulations now are not planning on coming out. In the beginning, those were getting confused with the ones that did come out. But now it is not anticipated that those second set of regulations will be coming out. Part of it is the backlash to the expansion of protections under these regulations.

Ms. Catena provided a quick overview of these regulations and some of the changes. They were just under 1,600 pages in length. They came out mid-April and went into effect August 1<sup>st</sup>. This round of regulations were about 500 pages shorter, and they gave them about ten extra days to implement these, so they were very grateful for that. These new regulations are not retroactive. If they do get a Title IX complaint for something that happened before August 1<sup>st</sup>, they still have to use the 2020 process. They will still maintain that process and those policies, and make sure to continue both processes as needed.

According to Ms. Catena, each time she creates slides and then talks about them, there are more states that have enjoined the regulations. It is now up to 26 states as of the date of implementation. As Ms. Cordova had mentioned, most are around the expansion to protect sexual orientation and gender identity. There is an expansion to scope and jurisdiction. Title IX historically has said that it prohibits discrimination on the basis of sex. These regulations say that it also means sex stereotypes and sex characteristics. They have aligned with Title VII and the Bostock Opinion to also include sexual orientation and gender identity explicitly as protections under Title IX.

There is a little bit more required now for reporting, specifically for faculty members. There's an increased protection for pregnant and parenting students, and there is a new training requirement as well. Under the 2020 process for Title IX, they were restricted with what Title IX could address. It was only instances that were severe and pervasive and happened within the program or activity. They worked with the Dean of Students Office and other offices to continue to address off-campus behavior that the policies don't address. And now under Title IX, they are able to address behaviors that happen on campus and off campus, because now that responsibility is to address downstream effects.

If something happened off campus at a study abroad, and if it's impacting the campus community, the regs are saying UNM has some responsibility to modify or remedy the environment. Regent Rael asked about the 2020 regs, asking if off campus behaviors, for instance, are out of scope for Title IX. Ms. Catena responded they were out of scope for Title IX, but what they did was work with the Dean of Students office who designated CEEO as being able to investigate behaviors under the code of conduct. They still caught the same behaviors.

Chair Fortner asked what happened if, pre regulations, there was a sexual assault in an apartment off campus, and the two were in the same classroom. Prior, did you feel like you could not do as much? Ms. Catena responded that under Title IX, we were not allowed to address it. But they could still address it under the student code of conduct. They worked with the Dean of Students office and used the code of conduct to be able to address off campus behavior that fell outside of Title IX.

Chair Fortner added that the procedure changed back and forth under Obama and Trump as far as requiring someone to testify or being able to confront the accuser. Where are we at with that now? Ms. Catena said they are maintaining their administrative hearing process. However, under the 2020 process, advisors had to be there to cross examine the other party or to ask questions of the other party. That created a lot of tension. They would have advisors who are also attorneys who treated it like a court room. For the new process, advisors will still be there, but rather than doing the cross examination, they will do direct exams, so they will ask questions of their party. The hearing officer is going to do the cross examination. The parties are allowed to provide questions for that cross examination. But then this way, there isn't that adversarial cross examination component.

Chair Fortner asked Ms. Catena who steps into the role of an advisor. She replied that someone can choose their own advisor. It can be a trusted family member, a friend, a mentor, or an attorney. The University also has advisors that they provide free of charge for the parties if they do not have one.

For mandatory reporting, UNM's reporting policy is not changing, but it is expanding. Under the 2020 regulations, and historically, if there was a disclosure in a classroom assignment or a class discussion, that did not need to be reported. That now needs to be reported under Title IX. If there is a disclosure about sex-based discrimination in an assignment or in a class discussion, that is now required to be reported. Often, they see this in creative writing classes, gender study classes, or classes where they're dissecting antiracism or sexism. Sometimes in those discourses, people may share their personal stories as a way to describe experiences. Other times in a creative writing class, they might not know whether or not it is a creative expression or if it is a personal experience that comes out in it.

Chair Fortner asked if it does, then is there mandatory reporting? Does the instructor have to report it to Ms. Catena's office? She replied that is correct. Chair Fortner asked her opinion on that. She replied that as a former faculty member, she is concerned about the impact to academic freedom and the academic environment. She has been very open and honest about that. She wants to work with departments to find a way where even if it is reported, it doesn't chill the classroom. It's a challenge. She does not know how to get over that hump yet, but she wants to pull everyone to the table who needs to be there and figure out the best way forward. Because UNM has to be in compliance, and also find a way to serve its community. Folks who are conducting IRB-approved research are exempted from that reporting requirement. At least there are some protections there.

Ms. Catena continued on to say that previously, institutions were required to *offer* training to its employees. Now, employees are required to *complete* the training. They are working with EOD on tracking and ensuring training is complete. They are also working on an alternate training that is a trauma-informed training for folks who would be triggered by the content in the normal training. That does not go into effect until August of next year, so the DOE is providing a little bit of time to put that in place.

Ms. Catena described what isn't drastically changing. They are keeping their hearing office. They are maintaining the emergency removal process for those who pose an imminent threat to the campus community. They are keeping the preponderance of evidence standards. They are also still allowed to dismiss cases that do not fall within UNM's jurisdiction, and they can still offer supportive measures and sanctions after appeals have been exhausted. For the options for the grievance process, folks can file a report and take no formal action. They can explore their supportive measures and ways that the institution can support them. They can opt for an alternative resolution for Title IX. Both parties have to agree to it. It does not go on anyone's personnel file. And then they can also opt in for an investigation, which then would end in the live administrative hearing.

Regent Rael asked who gets to decide - the complainant or the victim? Ms. Catena stated they try to be as complainant driven as possible. If there is a time where the respondent or the alleged perpetrator poses an imminent or pervasive threat to the campus community, then they may move forward without their consent or participation. But for the alternative resolution, both parties have to agree. The victim/complainant has to agree, as well as the alleged perpetrator or the respondent. Otherwise, it would either go to the complaint process, or if the complainant wanted, they could just do a report and take no action.

Chair Fortner stated that sometimes you're going to proceed even if the victim says let's not do this. Theoretically, then, there is a paper that is written, it's reported. And from the paper, it seems severe and pervasive. But the person says, "No, no, no. I was I was just being creative." Ms. Catena responded if there was a class assignment, and the assignment itself was a creative writing assignment... severe is more of if there was a weapon involved. Is there physical harm that is being caused to multiple people within our institution? The threat assessment team would have to determine if someone is an imminent threat and have them removed from campus. What she would want to do is make sure that student knows all of the resources that are available to them on campus, so they can continue to thrive.

The regulations have also increased protections for pregnant and parenting students. It was there for employees. For students, whenever a student discloses that they are pregnant to a UNM employee, that employee must provide them with the Title IX Coordinator information and how Title IX protects them based on being pregnant. They have created that pamphlet. It is available on their website. They also created a pregnancy manual that outlines guidance for pregnant students and staff. In this way, UNM constituents can just go straight to their website, look at all of the guidance there, and be able to support our pregnant folks. EOD also helps support a short, five-minute video that they are going to be sharing with the campus community to be able to inform folks of these requirements. They then just ask that it's documented with their office, so if there is a disagreement later, they can help support them.

The government likes to change names. Employees have reasonable "accommodations," and those accommodations are also separate from an ADA accommodation. What Title IX decided to do was change the word from "accommodation" to "adjustment" to differentiate from ADA and non-ADA. It does get really confusing because then for students we're saying adjustments; for employees we're saying accommodations, which could mean ADA and non-ADA.

Chair Fortner asked, for a student who's pregnant, does that mean they can insist on certain accommodations during a test? Ms. Catena replied it would depend on their specific needs and possibly what their medical provider said that they would need. Either the student will work with their faculty, or if they can't come to a decision, we would help facilitate that conversation to see whether or not it would be an adjustment to an exam or to courses, a larger desk, extended break times, bringing in food, water, etc. Under the Title IX regulations, two things UNM must provide for students for pregnancy is those reasonable modifications or adjustments, and then a voluntary leave of absence for recovery.

Chair Fortner stated a voluntary leave of absence means a student can take off, say a month, but can't be punished; you're going to let them make it up somehow. Ms. Catena replied the student can be gone for as long as medically necessary. They require documentation from their provider. They would return back as close as possible to the status as they were when they left. If they're close to the end of the semester, they would talk potentially about an incomplete to be able to make up the assignments later. Chair Fortner asked if a student says, "Incomplete? What are you talking about? You're not treating me right. I want you to accommodate me, not give me an incomplete." Ms. Catena replied that it has to be reasonable. There are times where students want accommodations that UNM is not able to give. They will work with them and say this is what is available to them. They do have interim policies in place right now for 2740, the sex-based discrimination policy. It is the overall discrimination policy, and the new pregnancy policy is Policy 2760. They will be putting out more robust policies for public comment this semester. Provost Holloway provided them a deadline of April.

Angela Vigil, Health Sciences Compliance Officer addressed the Committee via Zoom. At the February meeting, there were a couple of items that she reported on, and she wanted to provide a status update on those. The first is the dishonest or fraudulent activities policy. This policy was drafted and presented at both the UNMH Committee and the Medical Group Policy Committee, and those policies have now been approved.

The other item was conflict of commitment, conflict of interest, and outside activities. The implementation of this project was April 1<sup>st</sup> with disclosures due May 20<sup>th</sup>. The majority of the disclosures are submitted, and she will review those. There are some outstanding disclosures that are slowly coming in, but they have made some impressive progress on all of that. The disclosures that have been submitted to date are currently being reviewed by the Compliance Department - specifically, herself and the Compliance Manager at UNM Health Sciences. The data from these reviews will actually drive the next phase. This is phase one of the project, and they will be entering into phase two shortly.

The presentation showed disclosure rates, to date, by college. Most of the colleges are at 100%. The School of Medicine is at 89.4%, and the overall rate is 90%, as of July 24. They are still working aggressively to get all of the disclosures in. At the next meeting of this Committee she will provide another update as to where they are. Chair Fortner asked for an idea of what some of these conflict disclosures are. Ms. Vigil replied that, for example, if they have any financial interest in another company outside of the work that they do at the University. If they have either a family-owned company or they outright own another company.

Ms. Vigil asked Dr. Ziedonis, Executive Vice President, Health Sciences if he had any other comments. Dr. Ziedonis replied that these are pretty routine across the whole nation. They are just catching up on having all the faculty do it. They do it already in research, as mandated by the National Institutes of Health (NIH). If someone has income from another company, maybe a pharmaceutical company or a device company, it's not to prohibit it, but just to say it has to be transparent. Income is one source. Perhaps they're on a board for another group. Things that the procurement office might care about. Things that are reported also in a national database where you could look up your doctor right now, today. They are looking at two issues. There is the conflict of interest, which could relate to patient care. You've developed a device and own the company and you want to put it in somebody's body. The patient should know that you have a relationship with the product. Also, conflict of commitment and amount of time and energy that goes beyond your primary job with UNM.

Dr. Ziedonis thanked Ms. Vigil and Dr. Ashkay Sood (Interim Director for UNM Health Sciences Faculty Academic Affairs, not present) for their great leadership and commended the deans for shepherding it with the chairs to get it done. It really took a great team effort. President Stokes and Provost Holloway have been very supportive of this initiative. They are looking, in the future, at having one common software.

Chien-chih Yeh, Internal Audit Manager, reported the current status of audit recommendations. There are two implemented recommendations this reporting cycle. Auditors verified implementation. The first one is for Project Echo, related to the time record keeping. Management indicated they revised the process, adding more information. Internal Audit sampled some time sheets; they seem to be consistent, so the recommendation is considered to be implemented. The second is for the newest audit, OMI, approved in May. The recommendation is related to their draft minutes. They had never finalized, approved, and published them. Following the recommendation, they revised the process and completed those minutes. Internal Audit reviewed their website and they are now available there, so this complies with the requirements. It is considered implemented as well.

The next three pages of the report are outstanding recommendations. They are either not fully completed by management, or Internal Audit has not fully verified the process. For example, the first one is for the Los Alamos branch campus. There's one remaining component of this big IT recommendation. They indicated they believe they addressed and completed the recommendation, and Internal Audit is in the process of reviewing the information they provided to determine if that's implemented, or not. The next two items in this section are recommendations that are not due yet.

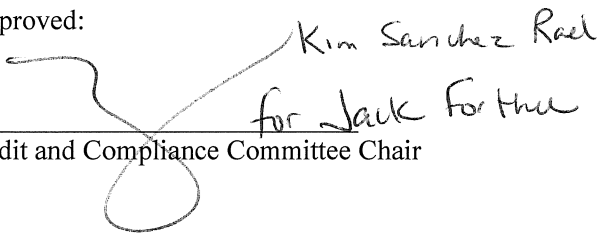
Summary of the Regents' Audit and Compliance Committee Meeting  
August 8, 2024

The last two pages of outstanding recommendations are for the OMI audit; none of these are past due. Some are due in a few months, and some of them are not due until one year from now. But those recommendations are still populated to this report. They are tracked, and this helps facilitate the recommendation implementation, maybe in a timelier fashion, and then Internal Audit can report back to the Committee on a regular basis.

Regent Rael asked if there is anything Internal Audit is particularly concerned about. Mr. Yeh replied no, because the audit was just approved in May, and the time proposed seems to be reasonable. Regent Rael asked if that means there is no unreasonable risk. Mr. Yeh replied that is correct. Chair Fortner asked if they need to accept the implementation of the first two recommendations. Mr. Griego stated no. Internal Audit just verifies that implementation was corrected and closes the recommendation. They report this to the Committee, and if there is no objection, it is considered completed and closed so it will not appear on the next report.

The meeting adjourned at 9:26 AM.

Approved:

  
for Jack Fortner  
Audit and Compliance Committee Chair