

SAMPLE POLICY

[NAME OF ORGANIZATION] CONFLICTS OF INTEREST AND DOCUMENTATION POLICY

Scope

This Conflicts of Interest and Documentation Policy (“Policy”) applies to all directors and officers of _____ (“[Corporation/Foundation]”) and any other person who is in a position to exercise substantial influence over the decisions and affairs of the [Corporation/Foundation] (collectively, “Covered Persons”).

Purpose

The purpose of this Policy is to protect the [Corporation/Foundation]’s interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Covered Person or might result in a possible excess benefit transaction (“Proposed Transaction”). This Policy provides procedures for identifying situations that represent potential conflicts of interest, determining whether a conflict of interest exists and if present, addressing such conflict of interest. Procedures are also provided for periodic reviews to ensure that the [Corporation/Foundation] is being operated in a manner consistent with its tax-exempt status. This Policy supplements (but cannot replace) any applicable laws governing conflicts of interest applicable to nonprofit organizations.

Policy

The terms in this Policy with initial letters capitalized have the meaning set forth in the section entitled “Definitions” or the meaning as designated in places throughout this Policy.

Duty to Disclose

If an Interested Person has a Position or Financial Interest in any business or other entity with which the [Corporation/Foundation] is considering entering into an arrangement or transaction, the Interested Person must disclose the existence of his or her Position or Financial Interest and all material facts related thereto to the [Corporation/Foundation]’s Board of Directors (“Board”) or Executive Committee as soon as the Interested Person has knowledge of the potential arrangement or transaction, and whenever requested by the Board or the Executive Committee.

Determining Whether a Conflict of Interest Exists

After disclosure of a Position or a Financial Interest by an Interested Person, and after any discussion with the Interested Person, the Interested Person (including those Interested Persons who are members of the Board or the Executive Committee) will leave the Board or Executive Committee meeting while the determination of whether a conflict of interest exists in connection with the Proposed Transaction is discussed by the Board or the Executive Committee and voted upon. A Position or a Financial Interest will be considered a conflict of interest only if the Board or the Executive Committee makes such determination. An Interested Person

is considered to have a conflict of interest with respect to his or her Compensation if the person receives Compensation from the [Corporation/Foundation] and the person's Compensation is being discussed or reviewed by the Board or any committee thereof.

Procedures for Addressing the Conflict of Interest

- Before any discussion and vote on whether a conflict of interest exists, an Interested Person may make a presentation to the Board or the Executive Committee regarding the Interested Person's Position or Financial Interest. After such presentation, the Interested Person will leave the meeting during the discussion of, and the vote on, the Proposed Transaction.
- The Board or the Executive Committee will undertake appropriate due diligence and inform itself of all material information reasonably available to it and explore all reasonable alternatives to the Proposed Transaction that would not involve the conflict of interest.
- If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or the Executive Committee will determine by a majority vote of the Disinterested Directors whether the Proposed Transaction is (i) in the [Corporation/Foundation]'s best interest, (ii) for the [Corporation/Foundation]'s own benefit, and (iii) fair and reasonable to the [Corporation/Foundation]. In conformity with this determination, the Board or the Executive Committee will make its decision as to whether the [Corporation/Foundation] may enter into the Proposed Transaction.

Quorum for Board or Executive Committee Action

For purposes of the Board or the Executive Committee actions to be taken under these procedures, including the determination whether a conflict of interest exists, a majority of the Disinterested Directors on the Board or the Executive Committee will constitute a quorum. However, in no case will a single Disinterested Director take any such action.

Violations of the Conflicts of Interest Policy

If the Board or the Executive Committee has reasonable cause to believe that a Covered Person has failed to disclose a Position or a Financial Interest, it will inform the Covered Person of the basis for such belief and afford the Covered Person an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the Covered Person and making such further investigation as may be warranted under the circumstances, the Board or the Executive Committee determines that the Covered Person has in fact failed to disclose a Position or a Financial Interest, the Board or the Executive Committee will take appropriate disciplinary and corrective action.

Documentation in Minutes

The minutes of the Board or the Executive Committee will contain:

- With respect to the determination of whether a conflict of interest exists, the name of the Interested Person who disclosed or was otherwise found to have a Position or Financial Interest in connection with an actual or potential conflict of interest; the nature of the Position or Financial Interest; any action taken to determine whether a conflict of interest was present; and the Board or the Executive

Committee's decision as to whether a conflict of interest in fact existed.

- With respect to whether or not the conflict of interest transaction is approved, the names of the persons present for the discussions and vote related to the Proposed Transaction; the content of the discussion; whether alternatives were discussed that did not involve a conflict of interest; the basis for the determination that the Proposed Transaction was (i) in the [Corporation/Foundation]'s best interest, (ii) for the [Corporation/Foundation]'s own benefit, and (iii) fair and reasonable to the [Corporation/Foundation]; and the record of the vote taken in connection with the proceedings.

Annual Statements

Each Covered Person will annually sign a statement that affirms such person:

- has received a copy of this Policy;
- has read and understands the Policy;
- has agreed to comply with the Policy; and
- understands the [Corporation/Foundation] is exempt from federal income tax and to maintain its federal tax exemption the [Corporation/Foundation] must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

In addition, each Covered Person will annually complete, sign and promptly return to the Board or the Executive Committee a Questionnaire and Disclosure Statement substantially in the form attached hereto. A Covered Person need not disclose Compensation paid to the Covered Person by [Corporation/Foundation] pursuant to a resolution of the Board.

Periodic Reviews

To ensure that the [Corporation/Foundation] operates in a manner consistent with its tax-exempt purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, the Board or the Executive Committee will conduct periodic reviews. The periodic reviews will, at a minimum, include the following subjects:

- whether the [Corporation/Foundation] Compensation arrangements are reasonable, based on competent survey information, and are the result of arm's-length bargaining; and
- whether transactions and arrangements with other entities and individuals conform to the [Corporation/Foundation]'s policies, are properly recorded, reflect reasonable payments for goods and services, further the [Corporation/Foundation]'s tax-exempt purposes and do not result in private inurement, impermissible private benefit, or in an excess benefit transaction.

Use of Outside Experts

When conducting the periodic reviews provided for above, the Board or the Executive Committee should rely

on appropriate outside experts such as attorneys, appraisers, or compensation or other consultants.

Definitions

Business Transaction: business transactions include, but are not limited to, contracts of sale, lease, license, and performance of services whether initiated during the year or ongoing from a prior year. Business transactions also include joint ventures (new or ongoing) in which either the profits or capital interest of the [Corporation/Foundation] and you (and/or a related person) each exceed 10%. Business transactions also include a transaction between the [Corporation/Foundation] and a management company if you are a direct or indirect 35% owner, or an officer, director, trustee, or key employee.

Compensation: wages, commissions, fringe benefits, royalties, honoraria, fees, and any and all other direct or indirect remuneration, as well as gifts or favors that are substantial in nature.

Debt Interest: ownership of debt or debt securities owed or issued by an entity or individual, whether secured or unsecured, including without limitation:

- loans, notes, bonds, and debentures, and any other evidence of indebtedness or liability for borrowed money; and
- any rights, warrants or options, or other securities that are exercisable, exchangeable or convertible for or into any of the foregoing.

Disinterested Director: a director of the [Corporation/Foundation] who is not an Interested Person.

Equity Interest: ownership of equity securities issued by an entity, including without limitation:

- in the case of a corporation, capital stock;
- in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;
- in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited);
- any other interest or participation that confers the right to receive a share of the profits and losses of, or distributions of assets of, the issuing entity; and
- any rights, warrants or options, or other securities that are exercisable, exchangeable or convertible for or into any of the foregoing.

Financial Interest: a Covered Person has a Financial Interest with respect to a potential arrangement or transaction if the Covered Person, directly or indirectly, through business, investment or a member of his or her Immediate Family:

- has or anticipates acquiring a Debt Interest or Equity Interest with respect to any entity or individual that provides goods or services to, or has any other transaction or arrangement with the [Corporation/Foundation], or is negotiating such a transaction or arrangement, if such interest exceeds the lesser of (i) \$100,000 in fair market value, or (ii) 5% of the outstanding debt/debt securities owed/issued by the

entity or individual, or equity securities issued by the entity, as applicable; or

- receives or anticipates receiving Compensation from the [Corporation/Foundation] or from any entity or individual that provides goods or services to, or has any other transaction or arrangement with, the [Corporation/Foundation] or is negotiating such a transaction or arrangement, and such Compensation, transaction or arrangement is being considered by the Board of Directors or a committee thereof.

Immediate Family: a Covered Person's spouse, ancestors (including parents, grandparents and great-grandparents), brothers and sisters (whether whole or half blood) and the children (natural or adopted), and grandchildren of the Covered Person, and the spouse's brothers, sisters, children and grandchildren.

Interested Person: a Covered Person who holds a Position or a Financial Interest. If a Covered Person is an Interested Person with respect to any of the [Corporation/Foundation]'s affiliates, he or she is an Interested Person with respect to the [Corporation/Foundation] and all of such affiliates.

Position: a Covered Person holds a Position if the Covered Person or a member of his or her Immediate Family is or anticipates becoming a director, trustee, officer, employee, or agent of, a consultant or advisor to, or the holder of any other position with, any entity or individual that provides goods or services to, or has any other transaction or arrangement with the [Corporation/Foundation] or is negotiating such a transaction or arrangement.

Related Person: a Family Member or an entity that is 35% controlled by you and your Family Members. A Related Person also includes an entity (other than a tax-exempt entity under Section 501(c)) of which you were serving, at the time of the transaction, as an officer, director, trustee, key employee, partner/member with an ownership interest of more than 5% if the entity is taxable as a partnership, or a shareholder with an ownership interest of more than 5% if the entity is a professional corporation.

Related Organization: a Related Organization means an organization that is a parent entity, subsidiary, commonly controlled, supporting organization, or supported organization of the [Corporation/Foundation].

Note: This information is provided only as a guide; consult with legal counsel before finalizing any policy.

This sample policy was prepared by Janice Anderson and John Crawford of, Polsinelli, PC, Chicago, IL.

SAMPLE ANNUAL DISCLOSURE STATEMENT PERSONAL AND CONFIDENTIAL

Instructions: In connection with completing this disclosure statement, please review the Conflicts of Interest and Documentation Policy (“Policy”) of _____ (“Corporation”). Terms used in this form with initial letters capitalized and not otherwise defined will have the meaning given to them in the Policy. When providing answers, if there is insufficient space, please complete your answer on a separate sheet of paper and attach to this form. Please submit the completed form to _____.

COVERED PERSON:

Name: _____

Position with the Corporation (Check all that apply):

Director Officer Key Employee Other: _____

Section I: POSITIONS AND FINANCIAL INTERESTS:

Yes No Did you or any member of your Immediate Family during the past year engage in, or do you anticipate that you or any member of your family will engage in, a transaction or arrangement with the Corporation?

Yes No Do you or member of your Immediate Family hold, or anticipate holding, a Position (e.g., director, trustee, officer, employee, agent, consultant, advisor, etc.) with any entity that to the best of your knowledge and belief provides goods or services to, or has any other transaction or arrangement with, the Corporation or is negotiating such a transaction or arrangement? If yes, please answer Section VII.

Yes No Do you or any member of your Immediate Family directly or indirectly, have, or anticipate receiving or acquiring, a Financial Interest or receive any compensation (wages, commissions, fringe benefits, royalties, honoraria, fees, gifts, etc.) with respect to any entity that provides goods or services to, or during the past year or current year has had any other transaction or arrangement with, the Corporation or is negotiating such a transaction or arrangement?

IF YOU ANSWERED “YES” TO ANY OF THE ABOVE QUESTIONS, PLEASE COMPLETE SECTION VII OF THIS FORM. PLEASE FILL OUT A SEPARATE SECTION VII FOR EACH IMMEDIATE FAMILY MEMBER FOR WHICH YOU ARE REPORTING.

Section II: OTHER INTERESTS:

Describe any other relationship, activity or situation which could be construed as placing you in a position where there is a conflict between your personal interests (or those of any Immediate Family) and the interests of the Corporation: _____

Section III: INDEPENDENCE OF BOARD MEMBER (TO BE ANSWERED BY DIRECTORS [OR TRUSTEES] ONLY)

Yes No Are you an independent board member? A member of the board is considered independent only if all three of these circumstances applied at all times during the preceding tax year of the Corporation:

1. The board member was not compensated as an officer or other employee of the Corporation or of a Related Organization, except for the religious exception discussed below.
2. The board member did not receive total compensation or other payments exceeding \$10,000 for the year from the Corporation or from related organizations as an independent contractor, other than reimbursement of expenses or reasonable directors' and trustees' fees.
3. Neither the director, nor any Immediate Family of the director, was involved in a transaction with the Corporation or a Related Corporation, directly or indirectly through affiliation with another organization, that is a loan, a grant described in Section VI or a Business Transaction described in Section VIII for the Corporation's or a Related Organization's preceding tax year.

A member of the governing body is not considered to lack independence merely because of any of the following circumstances:

1. The member is a major donor to the Corporation, regardless of the amount of the contribution.
2. The member has taken a bona fide vow of poverty and either (a) receives compensation as an agent of a religious order or of a religious and apostolic organization, but only under circumstances in which the individual does not receive taxable income or (b) belongs to a religious order that receives sponsorship or payments from the organization that do not constitute taxable income to the member.
3. The member receives financial benefits from the Corporation solely in the capacity of being a member of the charitable or other class served by the Corporation in the exercise of its exempt function, such as being a member of a trade association, so long as the financial benefits comply with the Corporation's terms of membership.

Section IV: RELATIONSHIPS WITH OTHER OFFICERS, DIRECTORS, OR KEY EMPLOYEES

Yes No Is any other director, officer or key employee a member of your Immediate Family?

If yes, please identify the person(s) with whom you have a family relationship. _____

Yes No Do you have a business relationship (see below) with any other director, officer or key employee?

Business relationships between two persons include the following:

1. One person is employed by the other in a sole proprietorship or by an organization with which the

other is associated as a trustee, director, officer, key employee, or greater-than-35 percent owner.

2. One person is transacting business with the other (other than in the ordinary course of either party's business on the same terms as are generally offered to the public), directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the tax year. Indirect transactions are transactions with an organization with which the one person is associated as a trustee, director, officer, key employee, or greater-than-35 percent owner.
3. The two persons are each a director, trustee, officer, or greater than 10 percent owner in the same business or investment entity.

Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (e.g., ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities. A business relationship does not include, for these purposes, the following privileged relationships: (1) attorney-client; (2) medical professional (including psychologist) and patient; and (3) priest/clergy and penitent/communicant.

If yes, please identify the person(s) with whom you have a business relationship and the type of relationship.

Section V: GRANTS FROM CORPORATION:

Yes No Did you or a Related Person receive a grant or assistance from the Corporation in the past year? Examples of grants are scholarships, fellowships, internships, prizes and awards.

If yes, please describe the grant and the relationship, if the grant was made to a Related Person. _____

Section VI: COMPENSATION FROM A RELATED ORGANIZATION

Yes No Do you, or did you in the past year, receive Compensation from a Related Organization? If so, please describe the amount of compensation and the Related Organization. _____

Section VII: DISCLOSURE OF POSITIONS AND FINANCIAL INTERESTS

THIS SECTION SHOULD BE COMPLETED ONLY IF YOU ANSWERED "YES" TO ONE OR BOTH OF THE QUESTIONS IN THE DISCLOSURE STATEMENT SECTION ENTITLED "Section I: POSITIONS AND FINANCIAL INTERESTS". If you are disclosing multiple interests, please make the appropriate number of copies of this page before completing.

PERSON HOLDING POSITION OR FINANCIAL INTEREST:

The disclosures made in this Section relate to a Position or Financial Interest held by:

You Immediate Family

If for an Immediate Family member, indicate his or her name and relationship to you:

Name: _____ Relationship: _____

ENTITY OR INDIVIDUAL WITH RESPECT TO WHICH POSITION OR FINANCIAL INTEREST HELD:

Information regarding the entity with respect to which the Position or Financial Interest is held:

Name: _____

Address: _____

Type of Entity in which Interest is held:

- Individual/Sole Proprietorship Corporation Association
- Limited Liability Company Trust Other: _____
- Government (or agency or political subdivision thereof) Partnership

POSITION OR FINANCIAL INTEREST HELD:

Yes No Is a Position held with the entity or individual? If yes, please check all that apply:

- Director Trustee Officer Employee Agent Consultant Advisor
- Other: _____

Describe Duties: _____

Is a Financial Interest held with respect to the entity or individual? If yes, please check all that apply:

- Wages Commissions Bonuses Fringe Benefits Fees
- Partner Shareholder Member Other Equity/Debt Ownership/Options
- Other: _____

If Financial Interest, state percentage ownership interest held:

Yes No Has the Position and/or the Financial Interest been affected by the provision of goods or services to, or other transaction or arrangement with, the Corporation or, to the best of your knowledge and belief, will such Position and/or Financial Interest be affected by such

provision or other transaction or arrangement in the future? If yes, please explain: _____

BUSINESS TRANSACTIONS:

Yes No Does or will the entity or individual have a Business Transaction with the Corporation or is it negotiating or will it negotiate a Business Transaction with the Corporation? If so, describe the Business Transaction or proposed Business Transaction and the amount involved: _____

Section VIII: SIGNATURE AND AFFIRMATION STATEMENT

By signing below, I am affirming that the foregoing answers on this disclosure statement are, to the best of my knowledge, true, accurate and correct, and that I have received a copy of the Corporation's Conflicts of Interest and Documentation Policy ("Policy"), that I have read and understand the Policy, that I agree to comply with the Policy, and that I understand the Corporation is an entity that is exempt from federal income tax and must engage primarily in activities that accomplish one or more of its exempt purposes to maintain its tax exemption.

Signature

Printed Name and Title: _____

Date: _____

Note: This information is provided only as a guide; consult with legal counsel before finalizing.

This sample annual disclosure statement was prepared by Janice Anderson and John Crawford of Polsinelli, PC, Chicago.