

USMF FOUNDATION

Managing Conflicts of Interest

A conflict of interest exists when a board member is in a situation where his or her own self-interest and the interests of the organization might be in conflict. A common example of a conflict of interest comes up when a board member runs a business that sells something the organization might need and has a chance to influence the purchasing decision.

While some conflicts of interest must be diligently avoided, others may be managed in such a way as to protect the Foundation and the board members from the appearance of impropriety. Typically, managing the conflict involves these steps.

1. DISCLOSE THE CONFLICT

- a. Each board member is asked annually to review the Conflict of Interest Policy and fill out a questionnaire disclosing actual and potential conflicts of interest.
- b. These questionnaires are reviewed by general counsel, by the audit committee and by the governance committee.
- c. If a conflict of interest is known by staff but not disclosed by a board member, staff will ask the board member to revisit the questionnaire.
- d. Examples of conflicts of interest that should be disclosed:
 - i. A board member is partner in an accounting firm that would like to do business with the foundation.
 - ii. A board member is part owner of a catering business that would like to do business with the foundation.
 - iii. A board member is also a board member of a foundation for whom the USMF provides investment management services.
 - iv. A board member is an officer, partner, employee or beneficial owner of an investment management company with whom the foundation does business.

2. RECUSAL

- a. If a board member has a conflict of interest and the board or a committee of the board is making a decision relevant to the conflict of interest, the board member should recuse him or herself from the vote and any discussion preceding the vote.
- b. Notwithstanding the foregoing, the committee may ask questions of the board member to help inform their decision prior to the conflicted board member leaving the room or dropping off the call, as the case may be.

USMF FOUNDATION

CONFLICT OF INTEREST POLICY

The University System of Maryland Foundation (Foundation) board of directors, officers and key employees have a fiduciary duty of loyalty to the Foundation. This fiduciary duty requires that, in dealings for the Foundation, they put the interests of the Foundation ahead of all competing interests and that they not take advantage of their position with the Foundation for personal or private gain, either for themselves, any friend or family member, or any other organization in which they may have an interest. The Foundation recognizes the importance of adhering to the highest standards of responsibility, accountability and public scrutiny.

The purpose of this Conflict of Interest Policy and Questionnaire is to help identify situations that present potential or actual conflicts of interest and to specify procedures for reporting, reviewing and managing them. This Policy is intended to supplement, not supersede, any applicable federal and state laws governing conflicts of interest applicable to nonprofit corporations.

On February 14, 2008, the Internal Revenue Service (IRS) promulgated a revised Form 990, the annual reporting form applicable to tax-exempt entities such as the Foundation. The new form contains several questions designed to meet the transparency and accountability needs of the states, the public, and local communities served by the tax-exempt organization. This Conflict of Interest Policy and the Disclosure Form which accompanies it further serve as a mechanism for collecting the information necessary to complete the Form 990.

Guiding Principles and Procedures

a. *Disclosure.* Annually, each board member, officer and key employee shall, on the attached disclosure form, disclose interests or affiliations of such board member, officer or key employee which give rise to, or may give rise to, a conflict of interest or an appearance of a conflict of interest in the context of the board member's, officer's or employee's service on behalf of the Foundation. Such interests or affiliations shall include, but not be limited to, ownership interests, outside employment, officerships, directorships, trusteeships, advisory board memberships, committee or commission memberships, partnerships, or service arrangements which might in fact or in appearance conflict with such board member's, officer's or key employee's responsibilities to the Foundation. If there are material changes in those interests and affiliations during the year, the board member, officer or key employee shall promptly amend his or her disclosure for the purpose of disclosing those material changes.

The completed disclosure forms shall be reviewed by Foundation staff and reported to the Governance Committee. The Governance Committee shall make recommendations to the Executive Committee as it deems appropriate with respect to reported conflicts.

b. *Prohibition on Gifts or Other Benefits.* Board members, officers and key employees shall not accept benefits, favors, gifts, or other items of value that might affect the exercise of such person's judgment on behalf of the Foundation, might tend to impair confidence in the Foundation, or might create an appearance of impropriety. Notwithstanding the foregoing, board members may accept diminimus benefits having a value of less than \$100. Moreover, expenses associated with the attendance at investment conferences by board members who are on the Investment Committee or key employees who are on the investment staff which are absorbed or reimbursed by the entity putting on or otherwise sponsoring the conference shall not be considered a prohibited benefit under this section.

c. *No Financial Relationship with Foundation Unless Disclosed and Approved.* No board member, officer or key employee shall have any relationship as director, officer, partner, employee, advisory board member or consultant with or to, or have any substantial financial interest in, any investment entity in which, or with which, the Foundation has an investment without prior approval of a majority of those voting on the investment and recusal of the board member with the relationship. No board member shall have any financial interest in any transaction between the Foundation and a third party (i.e., commission, finder's fee, annual fee, etc.) unless disclosed in advance to, and approved unanimously by, the Executive Committee, except, however, that if such conflict arises in connection with an investment decision, then the conflict should be disclosed in advance to, and approved unanimously by, the Investment Committee. This prohibition covers any substantive and material financial interest. This prohibition does not apply to interests in publicly traded securities. If the Foundation has an investment relationship with an entity in which a board member has an interest at the time the board member joins the Investment Committee, the Foundation may maintain that investment relationship, *provided, however*, that in deliberations relating to that investment relationship, the board member having an interest shall absent himself or herself from the room and shall not otherwise participate in decisions relating to that investment relationship.

d. *No Use of Foundation Information.* No board member shall, for personal gain or for the gain of other organizations or individuals, with which he or she is associated, use any information not available to the public-at-large which was obtained as a result of service to the Foundation.

e. *Financial Interest in Proposed Foundation Transaction.* When a board member who is on the Investment Committee has a direct or indirect financial interest in a brokerage firm, an investment manager, a limited partnership or hedge fund entity, or other investment arrangement that is being considered by the Investment Committee for the Foundation, and that board member discloses such interest to the Investment Committee, the board member shall withdraw from the Investment Committee's deliberations on such investment or transaction (an "Affected Transaction"). When evaluating an Affected Transaction, the Investment Committee shall carefully review the circumstances of the actual or apparent conflict and evaluate alternative transactions where such an actual or apparent conflict does not exist. If the Investment Committee nevertheless decides to proceed with the Affected Transaction, the

Investment Committee must affirmatively determine that the Affected Transaction is fair and reasonable and that it is in the Foundation's best interests to enter into the Affected Transaction.

f. *Fair and reasonable.* All transactions where a board member has declared or been found to have a conflict of interest, whether or not such transaction involves an investment decision, must be fair and reasonable and in the Foundation's best interests.

g. In applying this Policy, the substance and not the form of the transaction shall be the paramount consideration. Interests of a board member shall include direct and indirect interests. That is, the Policy shall apply to activities performed by a board member either directly or through another person. For this purpose, the term "person" includes natural persons as well as partnerships, corporations, companies, associations, limited liability entities and other organizations.

Confidentiality

The individual disclosure statements shall be held by the Foundation as confidential to the extent permitted by law, but shall be available for review by any Foundation officer or board member.

CONFLICT OF INTEREST DISCLOSURE FORM

(FISCAL YEAR 2013 – July 1, 2012 – June 30, 2013)

NOTE: **Bold** terms are defined at the end of this document. Please answer all questions with respect to the time period from July 1, 2012 through June 30, 2013.

1. Please check all applicable relationships with the Foundation.

- Member of the Board of Directors
- Officer
- **Key Employeeⁱ**

2. Were you compensated as an officer of the Foundation?

Yes No

3. Did you receive total compensation or other payments exceeding \$10,000 from the Foundation as an independent contractor during FY13?

Yes No

4. Did you have a **Family Relationshipⁱⁱ** with any other board member, officer or **key employee**?

Yes No

If yes, please identify such individual(s) and explain the family relationship.

5. Were you employed by any other board member, officer or key employee?

Yes No

If yes, please identify the individual(s) and explain the business relationship.

6. Were you employed by an entity with which any other board member, officer or key employee is associated as a trustee, director, officer, key employee or more than 35% owner?

Yes No

If yes, please identify the entity and the individuals and explain the business relationship.

7. Did you transact business (other than in the ordinary course of either party's business on the same terms as are generally offered to the public) with any other director, officer or key employee, 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 in excess of \$10,000 in the aggregate during the tax year? (Indirect transactions are transactions with an organization with which the other director, officer or key employee is associated as a trustee, director, officer, key employee or more than 35% owner.) Business relationships between an attorney and client, medical professional (including psychologist) and patient or a priest/clergy and penitent/communicant are privileged and need not be disclosed.

Yes No

If yes, please identify the nature and details of the business transaction, including amounts of cash or property involved.

8. Do you and any other board member, officer or key employee serve together as directors, trustees, officers or owners of a greater than 10% interest in the same business or investment entity?

Yes No

If yes, please identify the individual(s) and the business or investment entity.

9. Did you or a family member engage in one or more business transactions with the Foundation in which you received payments during the year that exceeded \$100,000 in the aggregate?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

10. Did you or a family member engage in one or more business transactions with the Foundation in which all payments during the year for a single transaction exceeded \$10,000?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

11. Did a family member of yours receive compensation from the Foundation in excess of \$10,000?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

12. Do you, individually or collectively with your family, other directors, officers or key employees, own more than 35% of an entity which engaged in one or more business transactions with Foundation in which such entity received payments during the year that exceeded \$100,000 in the aggregate?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

13. Do you serve as an officer, director, trustee, or key employee of an entity which engaged in one or more business transactions with the Foundation in which such entity received payments during the year that exceeded \$100,000 in the aggregate?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

14. Do you (including the interests of family members) have more than a 5% interest as a partner or member if the entity is treated as a partnership or as a shareholder if the entity is a professional corporation which engaged in one or more business transactions with the Foundation in which such entity received payments during the year that exceeded \$100,000 in the aggregate?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

15. Do you, individually or collectively with your family, other directors, officers or key employees, own more than 35% of an entity which engaged in one or more business transactions with the Foundation in which all payments during the year for a single transaction exceeded \$10,000?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

16. Do you serve as an officer, director, trustee, or key employee of an entity which engaged in one or more business transactions with the Foundation in which all payments during the year for a single transaction exceeded \$10,000?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

17. Do you (including the interests of family members) have more than a 5% interest as a partner or member if the entity is treated as a partnership or as a shareholder if the entity is a professional corporation which engaged in one or more business transactions with the Foundation in which all payments during the year for a single transaction exceeded \$10,000?

Yes No

If yes, please identify the individual(s) involved and a description of the transaction, including amounts of cash or property exchanged.

ⁱ **Key employee**

For purposes of Form 990 reporting, an **employee** of the organization (other than an **officer, director, or trustee**) who meets all three of the following tests:

1. \$150,000 Test. Receives **reportable compensation** from the organization and all **related organizations** in excess of \$150,000 for the **calendar year** ending with or within the organization's **tax year**;
2. Responsibility Test. The employee:
 - (a) has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors, or trustees;
 - (b) manages a discrete segment or activity of the organization that represents 10% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
 - (c) has or shares authority to control or determine 10% or more of the organization's capital expenditures, operating budget, or compensation for employees.
3. Top 20 Test. Is one of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test) with the highest reportable compensation from the organization and **related organizations** for the calendar year ending with or within the organization's **tax year**.

ⁱⁱ **Family member, family relationship**

Unless specified otherwise, the family of an individual includes only his or her spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great grandchildren, and spouses of brothers, sisters, children, grandchildren, and great grandchildren.