

DIRECTOR CONFLICT OF INTEREST

SAMPLE DEFINITIONS AND RESPONSES

Sample 1

A "conflict of interest" is any situation where:

- (a) your personal interests, or
- (b) those of a close friend, family member, business associate, corporation or partnership in which you hold a significant interest, or a person to whom you owe an obligation could influence your decisions and impair your ability to:
 - (i) act in the best interests of the corporation, or
 - (ii) represent the corporation fairly, impartially and without bias.

It is important to note that a "conflict of interest" exists if the decision could be, or could appear to be influenced - it is not necessary that influence takes place.

Sample 2

This statement does not attempt to describe all possible conflicts of interest that could develop. Some of the more common conflicts from which Directors must refrain, however, are set out below.

- *Relationship of Company with third parties.* Directors may not engage in any conduct or activities (other than in connection with Board consideration of a prospective business or contractual relationship wherein a Director is carrying out his or her fiduciary responsibilities) that impair the Company's relationship with any person or entity with which the Company has or proposes to enter into a business or contractual relationship.
- *Compensation.* Non Employee Directors may not accept compensation from the Company for services performed for the Company other than director's fees and compensation associated with their activities as a director unless such compensation is approved in advance by the Chairman of the Governance and Nominating Committee.
- *Gifts.* Directors and members of their families may not accept gifts from persons or entities who deal with the Company in those cases where any such gift has more than a nominal value, is being made in order to influence the Director's actions as a member of the Board, or where acceptance of the gifts could create the appearance of a conflict of interest.
- *Personal use of Company assets.* Directors may not use Company assets, labor or information for personal use unless approved by the Chairman, or as part of a compensation or expense reimbursement program available to all Directors.

Sample 3

A conflict of interest is defined as a financial transaction of such significance that it could influence the director or officer's judgment. If the director or officer would gain some financial, personal, or other benefit from a transaction, there is likely a conflict.

Directors and officers should disclose both actual and potential conflicts of interest to the Board of Directors. Whether the conflict is clear or merely potential, the following should typically be disclosed:

- The nature of the conflict; and
- All known facts that a reasonably prudent person would believe to be material to a judgment about whether to proceed.

Just because a conflict exists does not mean that the transaction will not take place. Most states will allow the Board of Directors to approve such a transaction after full disclosure, providing certain formalities are followed. Check the corporation statute of your state to see whether such a provision exists. The usual method is to allow the Board to approve such a transaction providing that any interested director abstains from voting after making full disclosure of the transaction to the Board.

If the Board approves a transaction that has an element of conflict of interest after full disclosure, so long as the transaction or deal is fair to the corporation, the approved transaction should withstand any challenge made at a later date. However, these types of disclosed and approved transactions are sometimes challenged by disgruntled individuals or groups. An interested director may need to return the "benefit" to the corporation, including legal fees and expenses, if such suit is successful.

Sample 4

Conflict of interest includes, but is not limited to:

- Any direct or indirect competition, negotiation or business dealings with the company;
- Any direct or indirect position or financial interest held in any outside concern that competes negotiates or does business with the company;
- Any gifts, monetary awards, payments, services or special privileges that are dispensed to, or received or solicited from any outside concern that competes, negotiates or does business with the company which would result in personal gain;
- Any disclosure or use of information relating to the company for the benefit, advantage or profit of either the individual or outside concern.

Sample 5

Conflict of interest is defined as any financial or other interest which conflicts with the service of an individual because it could (1) impair the individual's objectivity, or (2) create an unfair competitive advantage for any person or organization.

The *appearance* of a conflict of interest can be just as damaging as the existence of a real conflict. An apparent conflict of interest arises when a reasonable person, with knowledge of the relevant facts, would question the impartiality of the individual in the matter being considered.

Interested Director. "Interested director" shall mean any director who has a material financial interest, as defined herein, or who serves as a director or officer of any entity with which the company has a material transaction, contract, or other arrangement.

Material Financial Interest. A "financial interest" is a "material financial interest" if the effect on a person, his family or a company or firm in which he has a financial interest, is significant in light of his personal financial condition or the financial condition of the company or firm.

Sample 6

A definition of what constitutes a conflict of interest is difficult. The minimum standard is that required by law. However, there are certain situations which the Company will always consider to be conflicts of interest. These occur if the employee or any other person having a close personal relationship with the employee (defined below):

- obtains a significant financial or other beneficial interest in one of the Company's suppliers, customers or competitors without first notifying the Company and obtaining written approval from the board or its designee;
- engages in a significant personal business transaction involving the Company for profit or gain, unless such transaction has first been approved in writing by the board or its designee;
- accepts money, gifts of other than nominal value, excessive hospitality, loans or other special treatment from any supplier, customer or competitor of the Company;
- participates in any sale, loan or gift of Company property without obtaining written approval from the board or its designee;
- learns of a business opportunity through association with the Company and discloses it to a third party or invests in the opportunity without first offering it to the Company;
- uses corporate property information or position for personal gain
- competes with the Company; or
- uses Company assets for other than legitimate business purposes.

Sample 7

What is a "conflict of interest"?

When a director has a financial or personal interest in a contract or transaction to which the company is a party - or is contemplating entering into a transaction that involves use of corporate assets or competition against the company - the director is considered to be "interested" in the matter. This interest can be direct or indirect.

Historically, transactions or conduct that might be conflicts of interest are not necessarily viewed as inherently improper - it is the manner in which an interested director and the board deal with the conflict that determines the propriety of the transaction and of the director's conduct..

How should directors handle potential conflicts of interest?

It depends on the nature of the potential conflict of interest. If it clearly is a conflict of interest and is significant, according to most experts, the best course of action is to eliminate the conflict by taking some action. If the potential conflict is "borderline" as to whether it exists or whether it is significant, it

can be dealt with by seeking approval by disinterested directors of the transaction or conduct that causes the potential conflict of interest.

As a first step, according to most experts, directors should always promptly disclose any potential conflicts of interest to the applicable board or committee - subject to any confidentiality obligations owed to others. After the disclosure, the interested director should leave any meetings where the matter is discussed. Obviously, the interested director should not cast any votes on any matter that directly - or indirectly - creates the interest..

Most state statutes have procedures that boards can use to authorize - or ratify - the company's transactions with interested directors.

How should disinterested directors analyze the fairness of a transaction that contains a potential conflict of interest?

According to most experts, by determining:

- whether the proposed transaction is on at least as favorable terms to the company as might be available from other parties,
- whether it is reasonably likely to further the company's business activities, and
- whether the process by which the decision is approved is fair.

The board should ensure that it discloses the nature of the potential conflict of interest and the results of the disinterested directors' consideration of the matter in the minutes of the committee meeting where it was deliberated - and then the board meeting where it was approved.

SAMPLE DIRECTOR CODE OF CONDUCT/ETHICS POLICIES (w/ Conflict Provisions)

Great American Insurance Company

http://media.corporate-ir.net/media_files/irol/89/89330/corpgov/CodeofEthicsv6.pdf

Cincinnati Financial Company

http://media.corporate-ir.net/media_files/irol/11/110365/governance/conduct.pdf

The Allstate Corporation

<http://ir.allstate.com/phoenix.zhtml?c=93125&p=irol-govconduct>

Harleysville Group Inc.

http://www.harleysvillegroup.com/gov/doc/BOD_governance_principles.pdf