

# The Andrew W. Mellon Foundation

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## Conflicts of Interest and Disclosure Policy

### PREAMBLE

As a charitable organization, The Andrew W. Mellon Foundation (the “Foundation”) has a special obligation to uphold the public trust. Members of the Board of Trustees, members of Board committees, officers, and key staff, including program officers, associates, advisors, administrators, and investment and finance staff, (“Key Staff”) of the Foundation (collectively, “Covered Persons”) might have interests in conflict with those of the Foundation. The state law duty of loyalty requires that a Covered Person be conscious of the potential for such conflicts and act with candor and care in dealing with such situations.

Furthermore, the Internal Revenue Code (the “Code”) contains special provisions regarding prohibited and permissible transactions between a private foundation and its disqualified persons (e.g., Trustees, officers, and persons having similar responsibilities, their family members, and certain organizations in which they have an interest). The self-dealing rules applicable to private foundations under the Code are separately described in **Appendix A** to this disclosure policy. Any proposed transaction between a disqualified person, as defined under the Code, and the Foundation will first be examined to determine the applicability, if any, of the self-dealing rules (see Appendix A). Any violation of the self-dealing rules, regardless of whether it is to the benefit or detriment of the Foundation is illegal and prohibited. If the proposed transaction is not prohibited by the Code, the Foundation may proceed with its evaluation of the proposed transaction in accordance with this disclosure policy.

Disclosure of relationships and transactions that might violate the self-dealing prohibitions to the Code or might give rise to a conflict of interest is essential. Under relevant state law, conflicts of interest involving a Covered Person are not inherently illegal, nor are they to be regarded as a reflection upon the integrity of the individual involved. It is the manner in which the individual and the officers of the Foundation and the Board of Trustees deal with a disclosed conflict that determines the propriety of the transaction. The appearance of a conflict is often times as important as the reality. Therefore, the first steps in the Foundation’s Conflicts of Interest and Disclosure Policy are disclosure and discussion.

### POLICY

Covered Persons share responsibility to ensure that the Foundation satisfies all legal requirements and operates in accordance with its charitable mission. This obligation requires that Covered Persons act exclusively in the interests of the Foundation in matters affecting the Foundation and not use their positions to further their own financial interests or to derive personal advantage. A Covered Person must be sensitive to any interest he or she may have in a decision to be made by the Foundation and, as much as possible, recognize and disclose such interest immediately and prior to any presentation or discussion of such a matter.

Whenever a Covered Person becomes aware that he or she or a spouse, domestic partner, ancestor, descendant, or spouse of descendant (collectively, “Family Member”) has an interest in a transaction (e.g., in grantmaking, the hiring and firing of vendors and service providers

[including potential and current auditors, attorneys, investment advisers, and similar professionals], and in investment activities), the Covered Person shall disclose immediately and fully the conflict, seeming or real, to the General Counsel & Secretary of the Foundation. Such a disclosure must take place promptly and prior to the Board of Trustees and/or Board Committee or other Foundation decisionmaker considering the matter or taking action on it. An “interest in a transaction” may take the form of: (i) a significant personal financial interest in the transaction; (ii) a significant personal financial or other relationship with an organization involved in the transaction; or (iii) a position as trustee, director, officer, key staff, major donor, or someone owing a fiduciary duty to an organization involved in the transaction.

Upon disclosure, the General Counsel & Secretary, in consultation with the President, and where appropriate, the Chairman of the Board, will determine whether a conflict exists. Where it has been determined that a conflict is present or there is the appearance of a conflict, the conflict or apparent conflict will be disclosed (if not already known) to the others involved in the transaction, and the transaction may be approved only upon a vote of a majority of the disinterested members of the Board of Trustees or of the Board committee (for Board matters) or by a disinterested senior officer of the Foundation (in non-Board matters). Generally, the Covered Person may be present for the discussion in order to respond to questions and elaborate on the information presented. At the request of the Chairman (for Board matters) or senior officer (in non-Board matters), the Covered Person may be asked not to be present for discussion of the proposed action. In the Investment and Finance area, certain discussions with Covered Persons are prohibited (see **Appendix C**). In any event, the Covered Person will abstain from a vote on whether the transaction should be approved.

### **Documentation**

Whenever a Covered Person discloses an interest in a transaction or abstains from voting on a transaction by reason of his or her personal interest in the transaction or interest in an organization affected by the transaction, such disclosure and abstention will be recorded in the minutes of the meeting at which the consideration and vote occurred and/or in an appropriate record.

### **Grantee, Vendor, and Service Providers Involvements**

Any officer or Key Staff member of the Foundation who wants to join a board or otherwise significantly participate in a grantee’s operations or do business with a vendor or service provider needs to obtain the permission of the Foundation’s President before entering such participation.

### **Gifts**

Covered Persons should not accept favors or gifts of consequence from current and/or potential grantees, vendors, or service providers in connection with Foundation work. Trivial gifts in the nature of mementos need not be returned nor a friendly dinner invitation declined if it will cause unnecessary offense. A rule of reason should prevail, but a rule of reason that pays full attention to appearances as well as to actualities.

## **Interpretation**

This policy cannot describe all potential conflicts of interest, and its application may be uncertain at times. Covered Persons should exercise the highest standards of ethical judgment and err on the side of caution. If there are any questions, the individual concerned should consult with the Foundation's General Counsel & Secretary, Michele S. Warman.

## **Enforcement**

The Foundation may impose disciplinary measures, up to and including termination, of a Covered Person's association with the Foundation, if the person violates this policy.

## **Distribution of Policy and Annual Disclosure Forms**

All Covered Persons will receive a copy of this policy. Each Covered Person will complete a disclosure form (**Appendix B**) annually and update the form as necessary during the year.

## **Investment and Finance Staff**

In addition to this policy, a Supplemental Conflict of Interest and Disclosure Policy (**Appendix C**) applies to the Foundation's Investment and Finance staff and to the Trustees serving on the Investment and Finance Committee.

## **Other**

Any violations of this policy, even unintended ones, should be immediately disclosed to the Foundation's General Counsel & Secretary.

The Foundation reserves the right to amend and/or supplement this policy at any time.

**The Andrew W. Mellon Foundation**

**Requirements Under the Self-Dealing Regulations of the Internal Revenue Code**

The Internal Revenue Code (the “Code”) and Treasury Regulations prohibit the Foundation from engaging in acts of “self-dealing” with Disqualified Persons. “Disqualified Persons” with respect to the Foundation include: trustees, officers, and persons having similar powers or responsibilities with respect to the Foundation (“Foundation Managers”), Family Members of Foundation Managers, and any corporation, partnership, trust or estate in which a Foundation Manager has more than 35% of the voting power, profits interest (in a partnership), or beneficial interest (in a trust or estate).

Disqualified Persons are prohibited from entering into the following types of transactions under the self-dealing regulations:

- sale, exchange, or leasing of property between the Foundation and any Disqualified Person;
- lending of money or other extension of credit between the Foundation and a Disqualified Person, other than the lending of money by a Disqualified Person to the Foundation without interest or other charge, so long as the loan proceeds are used exclusively for charitable purposes;
- furnishing of goods, services or facilities between the Foundation and a Disqualified Person, other than the furnishing of goods, services or facilities by a Disqualified Person to the Foundation without charge so long as the goods, services or facilities are used exclusively for charitable purposes;
- payment of compensation or reimbursement of expenses by the Foundation to a Disqualified Person, other than the payment of compensation and the payment or reimbursement of expenses by the Foundation to a Disqualified Person for personal services that are reasonable and necessary to carrying out the exempt purposes of the Foundation, so long as the compensation, payment, or reimbursement is not excessive;
- transfer to, or use by or for the benefit of a Disqualified Person of the income or assets of the Foundation.

Prior to entering into any contract or other transaction involving a Disqualified Person, the Foundation must consider whether the contract or transaction would result in a violation of the prohibition against self-dealing. In making this determination, it is irrelevant whether a particular act or transaction would result in a benefit or a detriment to the Foundation.

**The Andrew W. Mellon Foundation**

**Disclosure Statement**

This Disclosure Statement is designed to assist Trustees, officers and Key Staff members of the Foundation in meeting their ongoing responsibility to disclose business or personal interests that may create a conflict of interest. **Part A** of the Disclosure Statement contains an acknowledgment that you have received a copy of the Foundation’s Conflicts of Interest and Disclosure Policy, have read it and understand it, and agree to comply with it. **Part B** of the Disclosure Statement requests a list of all entities in which you or a Family Member have a substantial involvement, including as trustee, director, or officer, and all entities that do or may do business with the Foundation in which you or a Family Member have a substantial economic interest. Please complete the attached Parts A and B, sign and date them, and return them to Michele S. Warman, General Counsel & Secretary.

**Part A**

I hereby acknowledge that I have received a copy of the Foundation’s Conflicts of Interest and Disclosure Policy and that I have read it and understand it. I hereby agree to abide by and comply with the procedures contained in the Conflicts of Interest and Disclosure Policy.

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

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

**Part B**

In the space below, please list all entities that do business or could potentially do business with the Foundation (e.g., as vendors, service providers, or as grantees) (1) in which you or your Family Members have a substantial involvement, including as trustee, director, officer, committee member, key staff member, major donor and/or (2) in which you or a Family Member have a material economic interest (i.e., an ownership interest of at least 10%).

- (1) Entities in which you or a Family Member have a relationship such as: director, trustee, officer, committee member, key staff member, major donor.

(List should include name of Family Member [if relevant], name of entity, and position held).

- (2) Entities in which you or a Family Member have a material economic interest.

(List should include name of Family Member [if relevant], name of entity, and position held).

**The Andrew W. Mellon Foundation****Investment Activity: Supplemental Conflicts of Interest and Disclosure Policy**

The Foundation's Investment and Finance staff ("Investment and Finance Staff") and Trustees on the Investment and Finance Committee (collectively, "Investment Persons") should strictly abide by the general principles and practices set forth in the Foundation's Conflict of Interest and Disclosure Policy in recommending, hiring, reviewing or terminating investment advisors and/or managers, making investment decisions and/or otherwise carrying out their financial management duties. The following supplemental policy is intended to provide some additional, non-exhaustive, guidance in determining when a conflict of interest or an appearance of a conflict exists in investment activities.

- Investment Persons should not directly or indirectly trade in, or advise that anyone else (including the Foundation) purchase or sell any financial instrument, if that purchase, sale or advice occurs while the Investment Person is in possession of any material non-public information about a publicly traded company. Moreover, Investment Persons sitting on the board of a publicly traded company and/or in the possession of material, non-public information about a publicly traded company should not participate in any Foundation discussion or decision regarding an investment related to such company. Finally, Investment Persons should not pass any material non-public information learned through affiliation with the Foundation to others, including other Investment Persons.
- Heightened scrutiny should be applied to any co-investment situation. Investment Persons, their Family Members and any entities in which they hold more than 35% of the voting power, profit interest or beneficial interest should not participate in or dispose of any investment in which the Investment Persons, Family Members, and/or such entities directly or indirectly receive an identifiable benefit that other co-investors do not receive from the Foundation's investment (e.g., reduced management fee or opportunity to participate at a reduced minimum). The same considerations should apply to investments in anticipation of a Foundation investment.
- No Investment Person should receive a placement fee or other personal benefit from a Foundation investment.
- All confidential information acquired in the course of managing the Foundation's financial assets should be kept strictly confidential, disclosed only to those within the Foundation with a need to know, and not used for purposes other than managing the Foundation's assets. This confidentiality obligation shall remain in effect permanently, including after separation from service to the Foundation, until such confidential information becomes publicly known through no fault of the Investment Person.

## Investment Activity (continued)

Because of the Investment and Finance Staff's day-to-day oversight of the Foundation's investments and regular contact with the Foundation's investment managers and advisors, the following additional guidelines apply to such staff:

- Investment and Finance Staff should not participate in any limited partnership or other investment opportunity not generally available or known to the public in which the Foundation has made or is considering making an investment or that is not generally available or known to the public that is suggested by a current or prospective investment manager.
- Investment and Finance Staff should not purchase, directly or indirectly, any equity security in an initial public offering.

March 19, 2004