

# **May and Stanley Smith Charitable Trust**

## **Conflict of Interest Policy**

### **Purpose**

The May and Stanley Smith Charitable Trust (the Trust) encourages its Trustees and associates (those individuals performing the administrative activities of the Trust) to serve in various leadership roles and to be involved broadly in nonprofit and service organizations in the community, recognizing that community involvement and interest helps further their understanding of the work and mission of the Trust. The Trust recognizes that both volunteer and professional involvements will, from time to time, lead to conflicts of interest, or to the appearance of a conflict of interest, between the individual's role in relation to the Trust and his or her volunteer and/or professional activities. The Trust has adopted a policy of dealing with such conflicts through full disclosure of any such actual or potential conflicting interests and abstention or recusal where a conflict is involved.

This conflict of interest policy is intended to supplement – but not replace – federal and state laws governing conflicts of interest and self-dealing applicable to charitable trusts and private foundations. While the May and Stanley Smith Charitable Trust is a foreign organization within the meaning of Internal Revenue Code (IRC) Section 4948, and as such not subject to the excise taxes and penalties imposed on domestic private foundations for certain prohibited transactions, the Trust would risk losing its tax-exempt status by engaging in these activities. Trustees and associates of the Trust and their immediate families are or may be “disqualified persons” as defined in provisions of the Internal Revenue Code applicable to private foundations. Trustees and associates who are unsure whether any contemplated action may be forbidden to them as “disqualified persons” should consult the Trust's legal counsel. The IRC private foundation self-dealing regulations are described in Appendix B.

### **Conflict of Interest**

This policy applies to Trustees and associates who have a decision-making role in the Trust's hiring, contracting, management, or grant making, and any other individuals whom the Trustees determine should be included under this policy. Persons covered under this policy, as well as their immediate family members, including spouse or equivalent, children, and parents, are referred to in this policy as “affiliated persons.”

A conflict of interest may exist in the following situations:

1. Where an affiliated person has a financial interest, or appears to have a financial interest, in a decision by or on behalf of the Trust.
2. Where an affiliated person has an affiliation or other conflict of loyalty that may influence, or suggest influence in, a decision by or on behalf of the Trust.

Examples of involvements that may appear to cause or cause conflicts of interest include:

- a. Membership by Trustees or associates on the boards of organizations that apply to or receive funds from the Trust, or service as an advisor, consultant, committee member, or volunteer for such organizations;
- b. Family members of Trustees or associates serving on the boards of organizations that apply to or receive funds from the Trust, or serving as an adviser, consultant, committee member, or volunteer for such organizations;
- c. An employment relationship between a Trustee or associate, or his or her family member, and an organization that applies to or receives funds from the Trust; and
- d. A professional or other relationship with a firm that provides goods or services to the Trust.

### **Policy and Procedures**

It is the policy of the Trust that no Trustee or associate shall derive any personal profit or gain, directly or indirectly, due to his or her relationship with the Trust, except as authorized by the Trustees. All persons affiliated with the Trust in any way are expected to conduct their affairs with the highest ethical standards of integrity, honesty, fairness, and objectivity.

In the case of a personal interest or the appearance of a conflict, the individual concerned is expected to disclose the conflict to the Trustees prior to making any related decisions on any matter pending before the Trustees or any action taken or to be taken by or on behalf of the Trust. Once a disclosure has been made, the affiliated person shall leave the room and the remaining Trustees will determine whether or not there is a conflict of interest. If it is determined that a conflict of interest does exist, the affiliated person shall not participate in the final deliberation and shall abstain from voting, although the person having the conflict may provide any relevant information and may answer specific questions raised by the Trustees. If the matter concerns a financial interest on the part of the affiliated person, that person shall leave the meeting for the final deliberation and vote. In other cases of conflict not concerning financial interest, the affiliated person may or may not be asked by the Trustees to withdraw from the meeting during the final deliberation and vote.

Trustees may waive any disclosed conflict if they determine that such waiver is permitted under law and the trust instrument governing the Trust, and that

1. the proposed transaction is fair and reasonable to the Trust;
2. the Trust proposes to engage in this transaction for its own purposes and benefits, and not for the benefit of the affiliated person;
3. the proposed transaction is the most beneficial arrangement that the Trust could obtain in the circumstances with reasonable effort; and
4. the proposed transaction is not a prohibited act of self-dealing under applicable provisions of the Internal Revenue Code dealing with private foundations.

Consideration of a potential conflict of interest and the resulting discussion, decision, and its reason will be recorded in the minutes of the meeting.

## **Gifts**

To avoid any suggestion of impropriety or conflict of interest, Trustees and associates should not accept anything (significant gifts, entertainment, extravagant meals, services, gratuities, or promises thereof) from grant applicants or recipients, service providers, vendors, government officials or anyone else who has or may seek some benefit from the Trust.

While it is preferred that gifts not be offered by grantees or service providers, and should be discouraged, Trustees and associates may accept tokens of appreciation that are of nominal value. Additionally, Trustees and associates may occasionally find it convenient to meet representatives of grant applicants or recipients, service providers, vendors, or government officials over a modest meal at the representative's expense. This is acceptable. However, an offer of a meal should be rejected if it is believed that accepting the offer might be viewed as creating an obligation on the part of the Trust, and extravagant meals or frequent meals with a specific representative or organization are to be avoided.

This provision shall not be construed as preventing a Trustee or associate from attending social functions with current or prospective grantees, vendors, or service providers, as long as the Trustee or associate pays for his or her own expenses. It may later be determined that it is appropriate for the Trust to reimburse the Trustee or associate.

## **Disclosure Statement**

A conflict of interest disclosure statement in the form annexed (Appendix A) hereto shall be furnished annually by each Trustee and covered individual disclosing any anticipated or possible conflict situations. This statement shall include current participation, affiliation, or other involvement with any nonprofit organization and with any for-profit organization used by the Trust in which an affiliated person may have an interest.

Appendix A

**May and Stanley Smith Charitable Trust  
Conflict-of-Interest Disclosure Statement**

I have reviewed the May and Stanley Smith Charitable Trust Conflict of Interest Policy and advise as follows:

- During my term of service as a Trustee or associate of the Trust, I agree to disclose to the Trustees any personal interest I may have in any matter pending before the Trustees or in any action taken or to be taken by or on behalf of the May and Stanley Smith Charitable Trust.
- Following is a list of organizations in which I have an interest which will or may be expected to engage in transactions with the May and Stanley Smith Charitable Trust, and a list of nonprofit organizations of which I am a trustee, director, or employee.

If none, write 'none'.

<u>Organization</u>	<u>Role</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date \_\_\_\_\_ Signature \_\_\_\_\_

## Appendix B

### **Private Foundation Self-Dealing Regulations Section 4941 of the Internal Revenue Code**

The Internal Revenue Code and Treasury regulations prohibit private foundations from engaging in acts of self-dealing with disqualified persons. Disqualified persons with respect to a private foundation include:

- foundation managers (officers, directors, trustees, or individuals with similar responsibilities).
- substantial contributors (defined as any person who has contributed an aggregate amount of more than \$5,000 to a private foundation, if such amount is more than two percent of the total contributions received by the foundation in the year in which the person makes a contribution).
- individuals who own more than 20 percent of a business enterprise that is a substantial contributor.
- family members of any person described above (spouse, ancestors, lineal descendants and spouses of lineal descendants).
- corporations, partnerships, trusts or estates in which a person described above owns more than 35 percent of the voting power, profits interest or beneficial interest.
- government officials.

Transactions that constitute self-dealing include:

- sale, exchange or leasing of property between a private foundation and a disqualified person.
- lending of money or other extension of credit between a private 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 and facilities between a private 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; the foundation may furnish goods, services and facilities to a disqualified person so long as they are furnished on a basis no more favorable than that on which they are made available to the general public.
- payment of compensation (or payment or reimbursement of expenses) 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 carry out the exempt purposes of the foundation, so long as the compensation, payment, or reimbursement is not excessive (“personal services” include foundation management by trustees, directors and officers, legal and accounting services and investment management; payment of directors’ and officers’ (D&O) liability insurance premiums on behalf of trustees and directors can be part of a reasonable (not excessive) compensation package).
- transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation, except when the benefit is incidental and tenuous, such as some public recognition for grants.

- payment to government officials.
- transactions involving corporate securities, except under narrow conditions (corporations that are disqualified persons generally may not purchase or exchange securities with their sponsored charitable foundations).