

## **Saratoga Regional YMCA**

Title: Conflict of Interest Policy  
Area: Human Resources  
Reference Number: HR-051916-002  
Contact Person: Chief Executive Officer or acting Chief Executive Officer  
Effective Date: June 16, 2016  
Replaces Policy: HR-081908-005

### **Purpose**

The purpose of this Policy is to implement a policy and procedures for compliance with the New York Nonprofit Revitalization Act of 2013 as well as applicable Federal requirements for organizations that are tax-exempt under Internal Revenue Code (“Code”) Section 501(c)(3). The directors and officers of the Association are responsible for upholding a public trust and must exercise their duties in good faith and in the best interests of the Association.

The Association has adopted this Policy to avoid any possible conflict between the personal interests of directors and officers and the interest of the Association. The purpose of this policy is to ensure those decisions about Association operations and the use and dispositions of Association assets are made solely in terms of benefits to the Association and are not influenced by any private profit or other personal benefit to the individuals affiliated with the Association who take part in the decision. In addition to actual conflicts of interest (as defined by this policy), directors, officers and employees are also obliged to avoid actions that could be perceived or interpreted to be in conflict with the Association’s interest. While these situations are not specifically covered by this policy, such individuals should disclose these situations as they arise for consideration by the Board, committee or individuals considering the matter.

This Policy is intended to contain in a single policy the relevant legal rules and best practices which govern the Association and its handling of conflicts of interest which include related party transactions as defined under the New York Not-for-Profit Corporation Law.

### **Administration**

This Policy and the policies and directives which it sets forth shall be adopted by, implemented by and administered for the Association by the Audit Committee. Questions about this policy statement may be directed to the Saratoga Regional YMCA Chief Executive Officer.

### **Definitions**

Related Party is defined as the following:

- (a) Any individual who currently serves or has served in the following capacities within the past five (5) years:
- (i) a voting member of the Board of Directors of the Association or any Affiliate of the Association;
  - (ii) an officer of the Association or any Affiliate of the Association, including, but not limited to (i) a President, Chief Executive Officer, Vice President of Operations and any other individual who has ultimate responsibility (individually or shared) for implementing the decisions of the Board or for supervising the management, administration, or operation of the Association; and (ii) a Treasurer, Chief Financial Officer and any other individual who has ultimate responsibility (individually or shared) for managing the finances of the Association; or
  - (iii) a Key Employee of the Association or any Affiliate of the Association.
- (b) Any Relative of those persons listed in (a) above. A “Relative” includes: spouse; domestic partner as defined in New York Public Health law Section 2954-A; ancestors; brothers and sisters (whether whole or half-blood); children (whether natural or adopted); grandchildren; great-grandchildren; and spouses or domestic partners of brothers, sisters, children, grandchildren, and great-grandchildren.
- (c) Any entity in which an individual listed in (1) or (2) has a controlling interest. A controlling interest is defined as:
- for corporations, ownership (directly or indirectly) of more than 35% of the combined voting power;
  - for partnerships or personal service corporations, ownership (directly or indirectly) of more than 5% of the profits interest; and
  - for trusts or estates, ownership (directly or indirectly) of more than 35% of the beneficial interest.

Key Employee includes any person who currently has or was, at any time during the past five (5) years, in a position to exercise substantial influence over the affairs of the Association. Facts and circumstances indicating that a person in a position to exercise substantial influence include, but are not limited to the following:

- the person is a founder or creator of the Association;
- the person is a substantial contributor<sup>1</sup> to the Association;

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<sup>1</sup> Substantial contributor is any individual who contributes more than \$5,000 to the Association, provided that such amount is more than 2% of the total contributions and bequests received by the Association during the Association’s most recently completed fiscal year and four (4) preceding fiscal years. Contributions from spouses are aggregated for these purposes.

- the person's compensation is based primarily on revenues from the Association's activities that the person controls;
- the person has or shares authority to control or determine a substantial part of the Association's capital expenditures, operating budget, or compensation for employees;
- the person manages a discrete segment or activity of the Association that is a substantial part of the Association's activities, assets, income, or expenses;
- the person owns a controlling interest in a corporation, partnership, or trust that is considered a Related Party; and
- the person is a non-stock organization controlled directly or indirectly by one or more Related Party.

Facts and circumstances indicating that a person is not a Key Employee include, but are not limited to the following:

- the person has taken a bona fide vow of poverty as an employee, agent, or on behalf of a religious organization;
- the person is an independent contractor whose sole relationship to the Association is providing professional advice and who has no decision-making authority and will derive no direct or indirect benefit from the transaction except for the customary fees for professional advice;
- the person is the direct supervisor of an individual who is not a Key Employee;
- the person does not participate in any management decisions affecting the Association as a whole or affecting a discrete segment of the organization that represents a substantial portion of its activities, assets, income, or expenses of the Association, as compared to the Association as a whole;
- any preferential treatment a person receives based on the size of the person's donation is also offered to all other donors making comparable contributions and offered as a part of a solicitation intended to attract a substantial number of contributions.

Affiliate is any entity controlled by, or in control of, the Association.

The following shall **not** be considered a Related Party:

- (a) other organizations that are tax-exempt under Code Section 501(c)(3); and
- (b) any employee who is not highly compensated<sup>2</sup> and is not otherwise considered a Related Party under this Policy.

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<sup>2</sup> Highly compensated employee is defined under Code Section 414(q)(1)(B)(i) and is adjusted annually for inflation. The amount for 2014 is \$115,000. Organizations can choose to set this amount at a hard dollar threshold if they prefer as long as it is equal to or lower than the statutory amount.

Related Party Transaction is any transaction, agreement or other arrangement in which a Related Party has a financial interest and in which the Association or any Affiliate of the Association is a participant.

Independent Directors are directors who:

- (a) are not, and have not been within the last three (3) years, compensated as an officer or employee of the Corporation or an Affiliate;
- (b) do not have a relative who is, or has been within the last (3) years, a “key employee” of the Corporation or an Affiliate;
- (c) have not received total compensation exceeding \$10,000 in any of the last three (3) fiscal years from the Corporation or an Affiliate (excludes reimbursement for expenses reasonably incurred or reasonable compensation for service as a director pursuant to New York Not-for-Profit Corporation Law Section 202(A));
- (d) do not have a relative who meets the requirements under (c);
- (e) are not a current employee of or do not have a substantial financial interest in an organization that made payments to, or received payments from, the Corporation or an Affiliate for property or services exceeding the lesser of \$25,000 or 2% of such organization’s consolidated gross revenues in any of the last three (3) fiscal years(payment does not include charitable contributions);
- (f) do not have a relative who is a current officer of or has a substantial financial interest in and entity described in (e) above;
- (g) do not own (wholly or partially) or are a director, officer or employee of the Corporation’s outside auditor or worked on the Corporation’s audit at any time over the last three (3) years; and
- (h) do not have a relative who meets the requirements under (g).

### **Annual Disclosure Statements**

- Duty to Complete Questionnaire. Each individual who is identified as a Related Party by the Association shall complete a conflict of interest questionnaire after becoming a Board member or officer and annually thereafter. The questionnaire shall be in the form approved by the Audit Committee.
- Duty to Update Information. Each individual who completes an annual disclosure form shall promptly advise the CEO of any changes to the information provided in that individual’s last completed conflict of interest questionnaire.

The CEO will ensure that all individuals required to complete an annual disclosure statement do so in accordance with this Policy. If any individual fails to comply with the Policy’s disclosure requirements, the CEO will report such failure to the Audit Committee, which shall recommend appropriate corrective action.

### **Ongoing Disclosure Obligation**

If during the course of a Board meeting, discussion, or deliberation any actual or potential conflict of interest becomes apparent to a Board member, the Board member must disclose such actual or potential conflict to the Audit Committee. If another Board member becomes aware of any actual or potential conflict of interest, he or she shall disclose such conflict if the conflicted Board member is absent. In both cases, such disclosure shall be made a matter of record.

### **Disclosures and List of Related Parties.**

All disclosures of interests in completed questionnaires or subsequent advice shall be compiled and reported by management to the Audit Committee.

A list of Related Parties identified through the annual disclosure process shall be assembled and provided to employees of the Association or other individuals who have authority to sign contracts, enter into transactions and sign checks on behalf of the Association. Such individuals shall be responsible for reviewing the list of Related Parties before entering into a transaction to confirm whether it is a Related Party Transaction.

### **Review Process for Related Party Transactions**

Once a Related Party Transaction is identified, the individual who identified the Related Party Transaction shall complete a Related Party Transaction Review Request (attached to this Policy) and submit the form to the CEO.

Upon receipt of a Related Party Transaction Review Request, the CEO shall convene a meeting of the Audit Committee to review the Related Party Transaction before it is entered into by the Association. The Audit Committee shall review the Related Party Transaction to confirm that it is fair, reasonable and in the Association's best interests to enter into the transaction. The Audit Committee shall utilize the following process to approve transactions subject to this Policy:

- (a) The Audit Committee must approve any Related Party Transaction in advance of Board approval for the transaction. Any member of the Audit Committee who has a conflict of interest as defined in this Policy may not participate in the vote, nor may he or she be present during voting or deliberations.
- (b) The Audit Committee must make its decision in reliance on appropriate data as to comparable arrangements to the extent they are available.<sup>3</sup>

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<sup>3</sup> This is required for any Related Party Transaction in which a Related Party has a substantial financial interest (not defined by the Act).

- (c) The Audit Committee must adequately document its decision and deliberations in the corporate records.

### **Quorum and Voting**

Directors or committee members who are present at a meeting, but not present at the time a vote is taken due to a conflict of interest or related party transaction shall be deemed present at the time the vote is taken.<sup>4</sup>

### **Employee Conflicts of Interest**

All employees should deal with vendors without any appearance of favor or preference based on personal considerations. Employees must, at all times, exercise their best skill, care and judgment for the benefit of the Association and must refrain from being influenced by personal considerations of any kind in the performance of their duties. Whenever a conflict of interest – or even a *possible* conflict of interest – exists, it must be fully disclosed and the employee involved may then be required to refrain from participating in the consideration or determination of any transaction with the vendor.

Specifically, an employee of the Association with a potential conflict of interest in a particular matter shall promptly and fully disclose the potential conflict to his supervisor who shall then disclose the matter to the CEO. The CEO shall be responsible for determining the proper way for the Association to handle decisions which involve employee conflicts of interest. In making such determinations, the CEO may consult with legal counsel.

The CEO shall report to the Board of Directors at least annually concerning employee conflicts of interest which have been disclosed and contracts and transactions involving employee conflicts which the CEO has approved.

### **Compensation Decisions.**

Compensation decisions for Related Parties are a Related Party Transaction. All recommendations for such matters shall be referred to the Board of Directors for review in accordance with this policy once a recommendation is made by the Executive Committee.

The Related Party shall not participate in the deliberations or voting on any matter relating to his compensation. Such individual may provide information to the Executive Committee or Board of Directors reviewing the compensation decision.

All compensation will be measured against an appropriate recognized survey or surveys

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<sup>4</sup> This will essentially count as a “no” vote by the individual who is recused from voting.

for compensation (if applicable) of corresponding rank, position and/or specialty in the same or a *comparable* geographic area as that of the Association. There shall be sufficient and adequate documentation to support the reasonableness and appropriateness of all compensation decisions. All deliberations regarding compensation of a Related Party shall be documented in the minutes of the Executive Committee and the Board of Directors.

### **Loans**

No loans, other than through the purchase of bonds, debentures or similar obligations of the type customarily sold in public offerings, or through the ordinary deposit of funds in a bank, shall be made by the Association to its directors or officers, or to any other company, firm, association or other entity in which one or more of its directors or officers are directors or officers or hold a substantial financial interest.

### **Political Activity**

The Association respects the rights of members of the Board, corporate officers and members of committees of the Board to be or not to be involved on an individual basis with political activities of their own choosing. No Association funds may be used on connection with any such activity and no individual may make political contributions on behalf of the Association.

All persons affiliated with the Corporation, including but not limited to members of the Board, corporate officers, staff and any committees, will refrain from engaging in the following activities on the Association's property, during corporate functions or while otherwise using the Association's resources or facilities:

- endorsing any candidate for public office;
- donating or contributing to any candidate's campaign
- participating or engaging in political fundraising events;
- publishing or distributing statements for or against any candidate; or
- engaging in any other activity that favors or opposes any candidate.

### **Violations of Conflict of Interest Policy**

If the Board of Directors determines that an individual has failed to comply with the policies and directives set forth in this policy statement, it shall recommend or take appropriate corrective action.

Origination Date: August 20, 2008  
Revision Dates: June 16, 2016  
March 23, 2017  
March 28, 2019

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

Chief Executive Officer

### RELATED PARTY TRANSACTION REVIEW REQUEST

Purpose: The purpose of this form is to provide sufficient information to the Audit Committee of the Saratoga Regional YMCA (SRYMCA) so that the Audit Committee may review certain transactions (“Related Party Transactions”) as required by the New York Not-for-Profit Corporation Law (the “N-PCL”) and the Foundation’s Conflict of Interest Policy.

Instructions: A staff member should complete this form when a Related Party Transaction is identified. Staff members should attach sufficient information to permit the Audit Committee to determine whether such transaction is fair and reasonable and in the Association’s best interests. Once completed, the staff member should submit this form along with any attachments to the CEO for the Audit Committee’s consideration. If the Related Party Transaction involves the CEO, then the CEO must submit the form and attachments to the President of the Board of Directors.

**Describe the transaction, agreement or other arrangement and how it will benefit the Association** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**List all Related Parties involved in the transaction and why they are considered a Related Party.** \_\_\_\_\_  
\_\_\_\_\_

**Describe the Related Party’s financial interest in the transaction and, if applicable, how that interest is deemed “substantial”** \_\_\_\_\_  
\_\_\_\_\_

**Describe how the Association or an affiliate is involved.** \_\_\_\_\_  
\_\_\_\_\_

**Describe generally the terms of the transaction and the amount(s) the Foundation will pay or be paid.** \_\_\_\_\_

**Describe any alternate transactions (to the extent available) and why the alternative transactions are not more favorable to the Association.\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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\*Alternate transactions are required where the Related Party has a substantial financial interest in the transaction. If in doubt, please include alternate transaction information.