

# St. John Fisher College

## CONFLICT OF INTEREST POLICY

### SECTION 1. PURPOSE:

St. John Fisher College is a not-for-profit, educational, tax-exempt organization. Maintenance of its status is important not only for its continued financial stability and public support, but as a continued legacy to the College's founding by the Basilian Fathers. Therefore, the Internal Revenue Service, the New York State Attorney General Charities Bureau, the US Department of Education and the New York State Education Department, as well as other state regulatory and tax officials, view the operations of the College as a public trust, which is subject to scrutiny by and accountable to such governmental authorities as well as its Board of Trustees and to members of the public.

Consequently, there exists among the College, its Trustees, officers and other managers a fiduciary duty, which carries with it a broad and unbending duty of loyalty and fidelity. All such persons shall have the responsibility of administering the affairs of the College honestly and prudently, and of exercising their best care, skill, and judgment for the sole benefit of the College. Those persons shall exercise the utmost good faith in all transactions involved in their duties, and they shall not use their positions or knowledge gained therefrom for their personal benefit. The interests of the College must be the first priority in all decisions and actions.

The College adopted the following policy designed to avoid any possible conflict between the personal interests of trustees and officers and the interest of the College. The purpose of this policy is to insure that decisions about College operations and the use and disposition of College assets are made solely in terms of benefits to the College and are not influenced by any private profit or other personal benefit to the individuals affiliated with the College who take part in the decision. In addition to actual conflicts of interest, trustees and officers are also obliged to avoid actions that could be perceived or interpreted to be in conflict with the College's interest.

### SECTION 2. PERSONS COVERED:

The following persons are subject to the disclosure and other requirements of this Policy (defined for the purposes of this Policy and its related disclosure statement as "Related Parties"):

- Members of the College Board of Trustees, including *ex-officio*, Emeriti and other non-voting Trustees as well as any Affiliate of the College;
- President of the College;
- Provost and Deans of the Colleges;
- Director of Campus Ministry;
- Vice President for Enrollment Management;
- Vice President for Institutional Advancement;
- Vice President for Finance and Business;
- Vice President for Student Affairs;

- College Counsel;
- any officer of any Affiliate of the College;
- any other individuals who can exercise substantial influence over the affairs of the College (“Key Person”); and

Related Parties also include any of the following:

- With respect to any of the individuals listed above, the individual’s (a) spouse or domestic partner as defined in New York Public Health Law Section 2954-A; (b) ancestors; (c) children (whether natural or adopted), grandchildren, great grandchildren and brother or sisters (whether by whole or half-blood); and (d) the spouses or domestic partners of individuals listed in (c) (defined for the purposes of this Policy and its related disclosure statement as “Relative”); and
- With respect to any of the individuals listed above and any Relative, any organization in which any of those Related Parties has a controlling interest. A controlling interest is defined as: (a) for corporations, ownership (directly or indirectly) of more than 35% of the combined voting power; (b) for partnerships or personal service corporations, ownership (directly or indirectly) of more than 5% of the profits interest; and (c) for trusts or estates, ownership (directly or indirectly) of more than 35% of the beneficial interest.

“Key Person” includes any person, *other than a trustee or officer*, whether or not an employee of the College, who:

- has responsibilities, or exercises powers or influence over the College as a whole similar to the responsibilities, powers, or influence of trustees and officers;
- manages the College or a segment of the College that represents a substantial portion of the activities, assets, income, or expenses of the College, which for these purposes shall be *ten percent (10%)*; or<sup>1</sup>
- alone or with others controls or determines a substantial portion of the Corporation’s capital expenditures or operating budget, which for these purposes shall be *ten percent (10%)*.

“Affiliate” is any entity controlled by, or in control of, the College.

### **SECTION 3. TRANSACTIONS COVERED:**

The transactions subject to this Policy include:

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<sup>1</sup> “Substantial” is not defined under the statute. SJFC needs to determine what is “substantial” for its purposes. Percentage listed is suggested threshold only.

- (a) Related Party Transaction which is any transaction, agreement or other arrangement in which a Related Party has a financial interest and in which the College or any Affiliate of the College is a participant.
- a. The following shall not be considered a Related Party Transaction:
    - i. A transaction that is de minimis, including: a single transaction that does not exceed \$100,000; or multiple transactions with a single third-party within a twelve (12) month period that does not exceed this threshold.
    - ii. A transaction that is not subject to approval by the Board of Trustees pursuant to the College's Contract Approval Policy
    - iii. A benefit provided to a Related Party solely as a member of a class of the beneficiaries that the College serves as part of its charitable activities, and which benefit is available to all similarly situated members of the same class on the same terms.
- (b) Conflict of Interest which is any transaction with that is not a Related Party Transaction, but involves a transaction that could be perceived or interpreted to be in conflict with the College's interest.

The intent is to reach any relationship or transaction with the College which involves or could ultimately harm or benefit it financially.

It is expected that Related Parties will recognize those areas which may give rise to conflict in the normal course of business and hold themselves to the highest standards of ethical, moral and behavioral values as exercised within the College community. It is the policy of the Board of Trustees that the existence of any Related Party Transaction shall be disclosed and considered before any transaction with the College is consummated. It shall be the continuing responsibility of all Related Parties to scrutinize their transactions and outside business interests and relationships for potential conflicts and to make such disclosures immediately.

#### **SECTION 4. DISCLOSURE PROCEDURE:**

- Duty to Complete Questionnaire. Prior to becoming a trustee, officer, or Key Person and annually thereafter, each trustee, officer or Key Person shall complete a conflict of interest questionnaire identifying, to the best of that person's knowledge, any entity of which such trustee, officer, or Key Person is an officer, director, trustee, member, owner, or employee with which the College has a relationship, and any transaction in which the College might have a conflicting interest. The questionnaire shall be in the form approved by the Audit Committee.
- Duty to Update Information. Each trustee, officer or Key Person shall promptly advise the Designated Compliance Officer of any changes to the information provided in that individual's last completed conflict of interest questionnaire.

If during the course of a Board or committee meeting, discussion, or deliberation any actual or potential conflict of interest or related party transaction becomes apparent to a Board or

committee member, the Board or committee member must disclose such actual or potential conflict to the Board of Trustees or committee. If another Board or committee member becomes aware of any actual or potential conflict of interest or related party transaction, he or she shall disclose such conflict if the conflicted Board or committee member is absent. In both cases, such disclosure shall be made a matter of record.

The Designated Compliance Officer 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 Designated Compliance Officer will report such failure to the Audit Committee or the Board of Trustees, which shall recommend appropriate corrective action

## **SECTION 5. 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 Board of Trustees.

A list of Related Parties identified through the annual disclosure process shall be assembled and provided to employees of the College or other individuals who have authority to sign contracts, enter into transactions and sign checks on behalf of the College. 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.

## **SECTION 5. REVIEW PROCESSES:**

### **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 Designated Compliance Officer.

Upon receipt of a Related Party Transaction Review Request, the Designated Compliance Officer shall convene a meeting of the Audit Committee to review the Related Party Transaction before it is entered into by the College. The Audit Committee shall review the Related Party Transaction to confirm that it is fair, reasonable and in the College's best interests to enter into the transaction **after** the transaction is approved in accordance with the College's contract approval or purchasing policy. The Audit Committee shall utilize the following process to approve transactions subject to this Policy:

- (a) The Audit Committee must approve in advance the Related Party Transaction. Any member of the Audit Committee who has a financial interest in the transaction 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>2</sup>

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<sup>2</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.

### **Review Process for Conflicts of Interest**

A potential Conflict of Interest should be disclosed as it arises for consideration by the Board, committee or individuals reviewing the matter to determine whether a Conflict of Interest exists and whether the individual should be recused from deliberations and voting.

If the Board or committee determines that a Conflict of Interest exists, then the individual with the Conflict of Interest may not participate in the vote, nor may he or she be present during voting or deliberations on the matter, nor may he or she attempt to influence improperly the deliberation or voting on the matter giving rise to such conflict.

The Board or committee should also adequately document its decision and deliberations in the corporate records.

### **Compensation Decisions**

Compensation decisions for Related Parties are a Related Party Transaction. All recommendations for such matters shall be referred to the Audit Committee for review in accordance with this policy once a recommendation is made by the Board of Trustees or designated committee charged with oversight of compensation matters.

The Related Party shall not participate in the deliberations or voting on any matter relating to his compensation, provided, that a trustee may participate in deliberation or voting on compensation for services as a trustee that is made available or provided to all trustees on the same or substantially similar terms. Such individual may provide information to the designated committee or Board of Trustees reviewing the compensation decision.

All compensation will be measured against an appropriate recognized survey or surveys for compensation (if applicable) of corresponding rank, position and/or specialty in the same or a *comparable* geographic area as that of the College. 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 designated compensation committee and the Board of Trustees as well as the Audit Committee.

## **SECTION 5. MISCELLANEOUS:**

### **Quorum and Voting**

Trustees 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>3</sup>

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<sup>3</sup> This will essentially count as a “no” vote by the individual who is recused from voting.  
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**Violations of Conflict of Interest Policy**

If the Audit Committee 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.

**Administration**

This policy statement and the policies and directives which it sets forth shall be adopted by, implemented by and administered for the College by the Audit Committee. Questions about this policy statement may be directed to the Secretary or Designated Compliance Officer] at [telephone number] or [e-mail address].

The Designated Compliance Officer shall be the Secretary of the Board or other staff member of the College as may be designated by the Audit Committee.

## RELATED PARTY TRANSACTION REVIEW REQUEST

Purpose: The purpose of this form is to provide sufficient information to the Conflict Committee of St. Fisher College 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 College’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 Conflict Committee to determine whether such transaction is fair and reasonable and in the College’s best interests. Once completed, the staff member should submit this form along with any attachments to the Designated Compliance Officer for the Conflict Committee’s consideration.

**Describe the transaction, agreement or other arrangement and how it will benefit the College**

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

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

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**Describe how the College or an affiliate is involved.**

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

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

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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.