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**CLAREMONT McKENNA COLLEGE**

**Policy Library**

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**Policy on Interested Party Transactions Involving  
Trustees, Officers, and Key Employees**

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<b>Volume:</b>	Governance
<b>Chapter:</b>	Policy on Interested Party Transactions Involving Trustees, Principal Officers, and Key Employees
<b>Approved by:</b>	Board of Trustees
<b>History:</b>	Approved: April 23, 2021 Revised: October 1, 2021 Revised: April 21, 2023
<b>Related Polices:</b>	Conflict of Interest Policy for Faculty Conflict of Interest Policy for Staff Conflict of Interest Policy for CIMC and CIF
<b>Additional References:</b>	Bylaws
<b>Responsible Official:</b>	General Counsel

**I. POLICY STATEMENT**

The purpose of this Policy is to protect the College’s interest when contemplating transactions that might benefit the private interest of a Trustee, Officer, or Key Employee, including ensuring compliance when a transaction might result in a self-dealing transaction as defined in Section 5233 of the California Nonprofit Corporation Law (the “Act”) or an excess benefit transaction as defined in Section 4958 of the Internal Revenue Code of 1986 (the “Code”). Section 4958 of the Code imposes penalties in the form of excise taxes as a result of an excess benefit received by certain organization insiders. This Policy includes transactions within the scope of the Claremont Investment Management Company and Claremont Investment Fund Conflict of Interest Policies.

More generally, the Policy intends to ensure that Interested Parties are attentive to situations in which their personal interests might conflict with the College’s interests so that they can discharge the fiduciary duties associated with their positions, including the duty of loyalty.

## II. CONTACTS

Please direct any questions to the General Counsel.

Contact	Telephone
General Counsel	909-607-0348

## III. DEFINITIONS

- (A) **Board:** The Board of Trustees of the College
- (B) **Interested Party:** Disqualified Persons, Officers of the Corporation, or any other person the Board designates as an Interested Party

### i. **Disqualified Persons:**

Someone who, through their powers, responsibilities, or interests, is in a position to exercise substantial influence over the affairs of the College. Certain types of positions are deemed to have substantial influence by virtue of the position, including:

- a. **Trustees:** A voting member of the College's Board, which includes the following categories of Trustees: Regular Trustees, Alumni Trustees, and *Ex Officio* Trustees.<sup>1</sup>
  - b. **President of the College**
  - c. **Vice President of Business & Chief Financial Officer ("VP & CFO")**
  - d. **Key Employee:** Any person having responsibilities, powers and influence similar to those of a Trustee, the President, or the VP & CFO, such as someone with authority to control the College's activities, finances or both, including those authorized by Board resolution to establish College financial accounts, sign College checks, or withdraw funds from College accounts
- ii. **Officers of the Corporation:** Those Officers of the Corporation<sup>2</sup> who do not meet the Disqualified Person standard but whom the Board identifies as an Interested Party
  - iii. **Family Member:** The spouse, ancestors, spouse's ancestors, siblings (whole or half-blood), descendants (natural or adopted), and spouses of siblings and descendants of an Interested Party
  - iv. **Controlled Entity:** Any entity where an Interested Party, together with any Family Members of the Interested Party, owns more than 35% voting power of a corporation,

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<sup>1</sup> Although the College also has Life Trustees and Honorary Trustees, the Bylaws specify that neither Life nor Honorary Trustees are members of the governing board under the Act.

<sup>2</sup> The Bylaws refer to College Officers as Officers of the Corporation.

more than 35% profits interest of a partnership, or more than 35% beneficial interest of a trust or estate

(C) **Interest:** Includes either a Financial Interest or a Relationship Interest

- i. **Financial Interest:** A Financial Interest exists when an Interested Party, either directly or indirectly through a Family Member or Controlled Entity, has:
  - i. An ownership interest or investment interest in any entity with which the College has a transaction or other arrangement (“transaction”);
  - ii. A compensation<sup>3</sup> arrangement with the College, or with any entity or individual with which the College has a transaction;
  - iii. A potential ownership or investment in, or compensation arrangement with, any entity or individual with which the College is negotiating a transaction; or
  - iv. An ownership or investment interest in, or compensation arrangement with, an entity or person who is an adverse party in any litigation, arbitration or other proceeding against the College.
- ii. **Relationship Interest:** A Relationship Interest exists when an Interested Party, either directly or indirectly through a Family Member or Controlled Entity, has a non-financial or non-economic relationship in a proposed transaction with the College.

(D) **Interested Party Transaction:** Any transaction involving the College where an Interested Party has any Financial or Relationship Interest in the transaction, including:

- i. **Self-Dealing Transaction:** Any Interested Party Transaction: i) in which a Trustee(s) has a material Financial Interest in the transaction; and, ii) which is not otherwise authorized pursuant to Section 5233 of the Act or approved pursuant to this Policy.
- ii. **Excess Benefit Transaction:** Any Interested Party Transaction where a financial or economic benefit conferred upon a Disqualified Person exceeds the reasonable value of the consideration received by the College.
- iii. **Potential Conflict of Interest Transaction:** Any instance in which an Interest of any Interested Party could compromise, or appear to compromise, the Interested Party’s impartiality and ability to exercise independent judgment in the best interests of the College.

(E) **Audit Committee:** The Audit & Compliance Committee of the Board

(F) **Subcommittee:** The Interested Party Transaction Review Subcommittee of the Audit Committee. The Subcommittee is comprised of the Chair and Vice Chair of the Audit Committee and a third standing member of the Audit Committee chosen by the Chair of the Audit Committee. If any member of the Subcommittee recuses themselves from reviewing a transaction under this Policy or is otherwise unavailable, the highest-ranking member of the

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<sup>3</sup> Compensation includes direct and indirect remuneration as well as substantial gifts or favors.

Subcommittee will appoint alternate member(s) from the remaining members of the Audit Committee.

- (G) **Deciding Body:** The group of individuals empowered to make decisions under this Policy (the Subcommittee, the Audit Committee, or the Board)

#### IV. INTERESTED PARTY TRANSACTION POLICIES

- (A) **Interested Party Transactions – In General.** The College will avoid entering into any Interested Party Transaction unless appropriate steps as described in this Policy are taken to ensure that: i) the Interested Party does not unduly influence the approval of the transaction; ii) the transaction's terms are fair and reasonable, and iii) entering into the transaction is in the College's best interests.
- (B) **Self-Dealing Transactions.** The College will only be a party to a transaction in which a Trustee has a material Financial Interest if:
- i. The transaction is part of a public or charitable program of the College that is approved by the College in good faith and without unjustified favoritism and results in a benefit to a Trustee or a Trustee's Family Member because the Trustee or the Trustee's Family Member is in a group of persons intended to be benefited by the public or charitable program;
  - ii. The transaction is one of which the Trustee has no actual knowledge and which does not exceed the lesser of one percent (1%) of the gross receipts of the College for the preceding fiscal year or \$100,000;
  - iii. The transaction is approved, whether before or after the consummation of the transaction, by the Attorney General of the State of California or the court in an action in which the Attorney General of the State of California is an indispensable party;
  - iv. The transaction involves setting the compensation of a Trustee and the transaction is approved by the Board fixing the compensation of a Trustee as a Trustee or Officer of the College pursuant to the College's Executive Compensation Policy; or
  - v. The transaction is approved pursuant to this Policy.

The Subcommittee's determination of whether the Financial Interest is material will be based on a holistic assessment and consideration of the facts and circumstances.

- (C) **Excess Benefit Transactions.** The College will not enter into an Excess Benefit Transaction in relation to a Disqualified Person and will ensure that the value the College receives is equal to or exceeds what it pays with respect to any Interested Party Transaction in which a Disqualified Person has any Financial Interest.
- (D) **Other Potential Conflict of Interest Transactions.** The College will not enter into any other Potential Conflict of Interest transaction unless: i) the Interested Party does not unduly influence the authorization or approval of the transaction; ii) the transaction's terms are fair and reasonable, and iii) entering into the transaction is in the College's best interests.

## **V. DUTY TO DISCLOSE INTERESTS AND POTENTIAL INTERESTS**

### **(A) Annual Disclosure and Acknowledgment**

Each year, every Interested Party will make and sign a statement that provides a full written disclosure of any Interests that they have to the Subcommittee (interests reported in prior years must be reported again so long as the underlying Interest continues); affirms that they have received a copy of, have read, understand, and will comply with this Policy; and affirms their understanding that the College is a charitable organization and, in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Interested Parties will make the annual disclosure and acknowledgment described above on a questionnaire or other forms or electronic systems as required by the College.

The annual disclosures will be shared with the Audit Committee.

### **(B) Before a Proposed Interested Party Transaction**

An Interested Party who has a potential Interest in a transaction will disclose the existence of the Interest and all material facts to the Subcommittee, which will ensure that the Interest is reviewed under this Policy.

### **(C) Limitation on Duty**

An Interested Party only has a duty to disclose Interests of the Interested Party's Family Member if the Interested Party is aware of the Family Member's Interest. Interested Parties have a duty to reasonably investigate the Interests of their spouse and children but do not have a duty to investigate Interests of other Family Members.

## **VI. SUBCOMMITTEE REVIEW OF INTERESTED PARTY DISCLOSURES**

The Subcommittee receives and reviews all disclosures of potential Interests by an Interested Party and determines whether the proposed transaction is an Interested Party Transaction. These determinations are made exclusively by the Subcommittee; however, the Subcommittee retains discretion to refer these determinations to the Audit Committee or the Board.

If the Subcommittee decides that the Financial Interest by a Trustee represents a potential Self-Dealing Transaction, the Subcommittee will refer the matter to the Board for review and action to ensure compliance with Section 5233 of the Act. The Subcommittee shall not approve a transaction in which a Trustee has a material Financial Interest.

The Subcommittee has the ability to render a decision on all other Interested Party Transactions under this Policy or to refer Interested Party Transactions to the Audit Committee or the Board for review and action. The Deciding Body will ensure that relevant facts and circumstances have been disclosed, reviewed, and acted upon as appropriate and that Interested Party Transactions are fair and reasonable and in the best interests of the College irrespective of any Interest of the Interested Party.

In discharging its responsibilities, the Deciding Body may consult appropriate Officers, such as the General Counsel.

The Deciding Body will maintain a record of its findings, actions, and referrals as specified in this Policy.

## **VII. AUTHORIZATION PROCESS RELATED TO INTERESTED PARTY TRANSACTIONS**

The Deciding Body will follow the following procedures:

- (A) With permission, the Interested Party may make a presentation at a meeting regarding the proposed Interested Party Transaction. After the presentation, the Interested Party will leave the meeting and will not be present for the discussion or vote on the Interested Party Transaction.
- (B) A disinterested person or Committee may be appointed to investigate alternatives to the proposed Interested Party Transaction.
- (C) After exercising due diligence, the Interested Party Transaction may be approved by a majority vote of the Deciding Body, without counting the vote of any Trustees with a material Financial Interest in the Interested Party Transaction after determining that:
  - i. The Deciding Body has knowledge of all material facts concerning the Interested Party Transaction and the Interest of the Interested Party;
  - ii. The Deciding Body has obtained and relied on appropriate due diligence materials, including, in the case of a potential Excess Benefit Transaction, data as to comparability, as described in Section 4958 of the Code and the accompanying Treasury Regulations;
  - iii. The Deciding Body is acting in good faith;
  - iv. The Interested Party Transaction is in the College's best interest and for its own benefit;
  - v. The Interested Party Transaction is fair and reasonable to the College at the time the College will enter into it; and
  - vi. After reasonable investigation under the circumstances, the College cannot obtain a more advantageous arrangement with reasonable effort under the circumstances from a person or entity that does not have an actual or potential Interest.

The Deciding Body will maintain a record of its approval of the Interested Party Transaction consistent with this Policy.

## **VIII. VIOLATIONS OF THE POLICY**

- (A) If the Board has reasonable cause to believe that an Interested Party failed to disclose an actual or possible Interest covered by this Policy, it will inform the individual of the basis for this belief and provide an opportunity to respond.

- (B) If, after considering the Interested Party's response and making further investigation as warranted under the circumstances, the Board determines the individual has failed to disclose an actual or possible Interest, it will take appropriate disciplinary and corrective action, including, without limitation, removal from the person's official position.

#### **IX. RECORDS OF PROCEEDINGS**

At any meeting where an Interested Party Transaction was reviewed and acted on, minutes will be prepared promptly and contain:

- (A) The names of the persons who disclosed or otherwise were found to have an actual or possible Interest;
- (B) The names of the persons who were present for discussions and votes relating to the transaction;
- (C) The nature of the Interest;
- (D) Any action taken to determine whether a material Interest was present;
- (E) Any comparability data relied upon and the source of the data;
- (F) The terms of the transaction and the content of the discussion, including whether alternatives to the proposed transaction were considered;
- (G) The basis for the decision to approve the transaction, including, if applicable, any finding as to whether the transaction will result in an economic benefit greater or lower than any comparability data would indicate; and
- (H) A record of the votes taken and the date of the vote.

If the Deciding Body is not the Audit Committee, the Deciding Body will ensure all minutes are sent to the Audit Committee.

#### **X. COMPENSATION**

- (A) All compensation of Interested Persons by the College for their services shall will be approved by the Executive Compensation Policy and not pursuant to this Policy.
- (B) A Trustee who receives compensation, directly or indirectly, from the College for services is precluded from voting on matters pertaining to that Trustee's compensation.
- (C) A Trustee who is a member of any Committee of the Board whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the College for services is precluded from voting on matters pertaining to that Trustee's compensation.
- (D) No Trustee or of any member of a Committee of the Board whose jurisdiction includes compensation and who receives compensation, directly or indirectly, from the College,

either individually or collectively, is prohibited from providing information to any Committee regarding their compensation.

**XI. PERIODIC REVIEWS**

To ensure that the College operates in a manner consistent with its charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, the Audit Committee will periodically review this Policy.