

CHAPTER 7: Conflict of Interest and Related Party Transaction Policy

7.1 Purpose

All directors, officers and staff owe a duty of loyalty to New York Common Pantry, Inc. (the “Organization”) and must act in good faith toward the Organization and in the Organization’s best interests, rather than in their own interests or the interests of another entity or person, and must comply with applicable legal requirements. The purpose of this Conflict of Interest and Related Party Transaction Policy (this “Conflict of Interest Policy”) is to set forth procedures for monitoring, reporting, review and oversight of, and review, approval or ratification of any action taken in connection with, conflicts of interest and related party transactions.

7.2 Applicability

This Conflict of Interest Policy applies to any person who is or at any time during the past five years was:

1. A director of the Organization or an “affiliate” (as defined below);
2. An officer of the Organization or an affiliate; or
3. A “key employee” (as defined below) of the Organization or an affiliate,

(each, a “Covered Person” or “you”).

This Conflict of Interest Policy addresses dealings between the Organization and a Covered Person or “Other Related Party” (as defined below).

An “affiliate” is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Organization.

A “key employee” is a person who is in a position to exercise substantial influence (as such term is used in section 4958 of the Internal Revenue Code and Section 53.4958-3 of the US Treasury Regulations) over the Organization and, other than directors and officers, may include, without limitation, a person who: (i) founded the Organization, (ii) is a substantial contributor, (iii) has authority to control a substantial portion of the Organization’s capital expenditures, operating budget or employee compensation, (iv) manages a discrete segment or activity of the Organization that represents a substantial portion of the activities, assets, income or expenses of the Organization (as compared to the Organization as a whole); (v) receives compensation primarily based on revenues derived from the Organization’s activities; and/or (vi) is highly-compensated by the Organization (for example, receiving annual compensation greater than \$150,000). Persons who qualify as “key employees” of the Organization will be so notified by the Organization.

An “Other Related Party” is a “relative” (as defined below) of a Covered Person or an entity in which a Covered Person or relative of a Covered Person has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%.

A “relative” is a (i) spouse, ancestor, child (whether natural or adopted), grandchild, great-grandchild, sibling (whether whole- or half-blood), (ii) spouse of a child (whether natural or adopted), grandchild, great-grandchild or sibling (whether whole- or half-blood), or (iii) a domestic partner, as defined in section 2994-A of the New York Public Health Law.

7.3 Conflicts of Interest

A conflict of interest arises whenever the interests of the Organization come into conflict with a financial or personal interest of a Covered Person, or otherwise whenever a Covered Person’s personal or financial interest could be reasonably viewed as affecting his or her objectivity or independence in fulfilling their duties to the Organization.

While it is not possible to describe or anticipate all the circumstances that might involve a conflict of interest, a conflict of interest typically arises whenever a Covered Person or Other Related Party has (directly or indirectly):

1. A direct or indirect interest (financial or otherwise) in a transaction, agreement or any other arrangement and in which the Organization or any affiliate participates;
2. a compensation arrangement or other interest in a transaction with the Organization;
3. a compensation arrangement or other interest in or affiliation with any entity or individual that: (i) sells goods or services to, or purchases goods or services from, the Organization; (ii) competes with the Organization; or (iii) the Organization has, or is negotiating, or contemplating negotiating, any other transaction or arrangement with;
4. the ability to use his or her position, or confidential information or the assets of the Organization, to his or her (or an affiliated party’s) personal advantage or for an improper or illegal purpose;
5. solicited or accepted any gift, entertainment, or other favor where such gift might create the appearance of influence on the Covered Person (other than gifts of nominal value, which are clearly tokens of respect and friendship unrelated to any particular transaction);
6. acquired any property or other rights in which the Organization has, or the Covered Person or Other Related Party knows or has reason to believe at the time of acquisition that the Organization is likely to have, an interest;
7. an opportunity related to the activities of the Organization that is available to the Organization or to the Covered Person, unless the Board has made an informed decision that the Organization will not pursue that opportunity;
8. been indebted to the Organization, other than for amounts due for ordinary travel and expense advances; or
9. any other circumstance that may, in fact or in appearance, make it difficult for the Covered Person to exercise independent, objective judgment or otherwise perform effectively.

7.4 Conflict of Interest Disclosure and Questionnaire

All material facts related to conflicts of interest (including those that implicate an Other Related Party but no Covered Person) (including the nature of your or the Other Related Party’s interest and information about any proposed transaction or other arrangement) are required to be

disclosed by the affected or involved/known Covered Person(s) in good faith and in writing to the Board of Directors at 8 East 109th Street New York, NY 10029. Disclosures should be made in advance, before any action is taken on the matter. Conflict identification and analysis can be difficult and, therefore, you are at all times expected to err on the side of caution and disclose all instances where a conflict of interest or the appearance of a conflict exists, even if you do not believe that there is an actual conflict.

Each current director, officer and key employee of the Organization, as well as nominees for election as director (prior to his or her initial election), must submit to the Secretary of the Organization at least once per year (and updated as appropriate) a questionnaire substantially in the form of the Appendix to this Conflict of Interest Policy. The Secretary of the Organization shall provide copies of all completed statements to the Chair of the Board of Directors.

7.5 Review and Approval

The Board of Directors will review all conflicts of interest and determine whether to approve or ratify any such matters. The Board of Directors may only approve the underlying matter if it determines that such matter, under the terms and within the circumstances and conditions presented, is fair, reasonable, and in the best interests of the Organization at the time of such determination. In making its determination, the Board of Directors will consider, without limitation:

1. Alternative transactions to the extent available;
2. The Organization's mission and resources;
3. The possibility of creating an appearance of impropriety that might impair the confidence in, or the reputation of, the Organization (even if there is no actual conflict or wrongdoing); and
4. Whether the conflict may result in any private inurement, excess benefit transaction or impermissible private benefit under laws applicable to tax-exempt organizations.

If the potential conflict of interest pertains to compensation for services or the transfer of property or other economic benefit to a Covered Person or Other Related Party, the Board of Directors must determine that the value of the economic benefit provided by the Organization to the Covered Person or Other Related Party does not exceed the value of the consideration received in exchange by obtaining and reviewing appropriate comparable data prior to entering the transaction. When considering the comparability of compensation, for example, the types of relevant comparability data which the Board of Directors may consider include, but are not limited to (1) compensation levels paid by similarly situated organizations, both exempt and non-exempt; (2) the availability of similar services within the same geographic area; (3) current compensation surveys compiled by independent firms; and (4) written offers from similar institutions competing for the same person's services. When the transaction involves the transfer of real property as consideration, the relevant factors include, but are not limited to (i) current independent appraisals of the property, and (ii) offers received in a competitive bidding process.

The approval of any matter that is the subject of this Conflict of Interest Policy shall require the approval of at least a majority of the members of the Board of Directors present and voting at the meeting.

Persons with an interest in any matter under review by the Board of Directors are not permitted to be present at or participate in any deliberations or voting by the Board of Directors with respect to the matter giving rise to the potential conflict, and must not attempt to influence improperly the deliberation or voting on such matter. In appropriate circumstances, any such person may be called upon to provide information relevant to the determination prior to the commencement of deliberations or voting related thereto.

In the event the Organization and/or a Covered Person in error enters into or otherwise participates in a conflict of interest transaction that requires pre-approval by the Board of Directors pursuant to this Conflict of Interest Policy, such transaction shall promptly upon discovery of such error be presented to the Board of Directors for its review and the Board of Directors shall consider, if appropriate, whether to (i) ratify such transaction, (ii) direct the rescission or modification of the transaction (if possible to do so), (iii) take any disciplinary action, and/or (iv) make changes to the Organization's controls and procedures in connection with such error.

7.6 Records

The minutes of the meeting of the Board of Directors during which a potential or actual conflict of interest is disclosed or discussed shall be documented contemporaneously with the meeting and reflect the name of the interested Covered Person, the nature of the conflict, and details of the deliberations of the disinterested directors (such as documents reviewed, any alternatives or comparable transactions considered, comparative costs or bids, market value information and other factors considered in deliberations) and the resolution of the conflict including any ongoing procedures to manage any conflict that was approved. The interested person shall only be informed of the final decision and not of particular directors' positions or how they voted. In addition, certain related party transactions are required to be disclosed in the notes to the Organization's audited financial statements and its annual federal tax filing on Form 990.

7.7 Compliance

If the Board of Directors has reasonable cause to believe that a Covered Person has failed to comply with this Conflict of Interest Policy, it may make such further investigation as may be warranted in the circumstances and if it determines that a Covered Person has failed to comply with this Conflict of Interest Policy, it shall take appropriate action which may include, in the case of directors and officers, removal of the Covered Person from the board or from office or, in the case of key employees or others, termination of employment with the Organization or an affiliate.

7.8 Policy Adoption and Oversight

The Board of Directors is responsible for providing oversight of the adoption and implementation of, and compliance with this Conflict of Interest Policy. Only directors satisfying the definition of "independence" pursuant to applicable law (as defined immediately below) are permitted to participate in any deliberations or vote on matters relating to this Conflict of Interest Policy. An "independent director" is defined to mean a member of the Board who:

1. Is not and has not been within the last three years, an employee of the Organization or an affiliate of the Organization, and does not have a relative who is, or has been within the last three years, a key employee of the Organization or an affiliate of the Organization;
2. Has not received and does not have a relative who has received, in any of the last three fiscal years, more than \$10,000 in direct compensation from the Organization or an affiliate

of the Organization (not including reasonable compensation or reimbursement for services as a director); and

3. Is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments to or received payments from, the Organization or an affiliate of the Organization for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of: (a) \$25,000 or (b) 2% of such entity's consolidated gross revenue (which payments do not include charitable contributions).

This Conflict of Interest Policy was adopted by the Board on June 2, 2015.