

# Colorado Field Ornithologists Conflict of Interest and Compensation Policy

## I. Overview

### 1. Purpose

The purpose of this Conflict of Interest and Compensation Policy (the “policy”) is to protect CFO’s interests when it is considering taking an action or entering into a transaction that might benefit the private interests of a director or officer, result in the payment of compensation to a director or officer beyond that which is voted on in board meetings, or otherwise violate state and federal laws governing conflicts of interest applicable to nonprofit, charitable organizations.

As a nonprofit, charitable organization, CFO is accountable to both government agencies and members of the public for responsible and proper use of its resources. Directors and officers have a duty to act in CFO’s best interests and may not use their positions for their own financial or personal benefit.

Conflicts of interest must be taken very seriously since they can damage CFO’s reputation and expose both CFO and affiliated individuals to legal liability if not handled appropriately. Even the appearance of a conflict of interest should be avoided, as it could undermine public support for CFO.

This policy applies to all directors, officers, and committee members.

## II. Identifying Conflicts of Interest

### 1. What is a conflict of interest?

A potential conflict of interest arises when a director or officer, or that person’s relative<sup>1</sup> or business (a) stands to gain a financial benefit from an action CFO takes or a transaction into

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<sup>1</sup> **Relative** means a person’s spouse or domestic partner, 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.

which CFO enters; or (b) has another interest that impairs, or could be seen to impair, the independence or objectivity of the director or officer in discharging their duties to CFO.

## **2. What are some examples of potential conflicts of interest?**

It is impossible to list all the possible circumstances that could present conflicts of interest. Potential conflicts of interest include situations in which a director or officer or that person's relative or business:

- has an ownership or investment interest in any third party that CFO deals with or is considering dealing with;
- serves on the board of, participates in the management of, or is otherwise employed by or volunteers with any third party that CFO deals with or is considering dealing with;
- receives or may receive compensation or other benefits in connection with a transaction into which CFO enters;
- receives or may receive personal gifts or loans from third parties dealing with CFO;
- has a close personal or business relationship with a participant in a transaction being considered by CFO;
- would like to pursue a transaction being considered by CFO for their personal benefit.

In situations where you are uncertain, err on the side of caution and disclose the potential conflict as set forth in Section III of this policy.

## **III. Disclosing Potential Conflicts of Interest**

All directors and officers must disclose to the best of their knowledge all potential conflicts of interest as soon as they become aware of them and always before any actions involving the potential conflict are taken and submit a signed, written statement disclosing all the material facts to the board of directors.

## IV. Determining Whether a Conflict of Interest Exists

1. After there has been disclosure of a potential conflict and after gathering any relevant information from the concerned director, officer or committee member, the board of directors, its assigns, or relevant committee shall determine whether there is a conflict of interest. The director, officer, or committee member shall not be present for deliberation or vote on the matter and must not attempt to influence improperly the determination of whether a conflict of interest exists.
2. In determining whether a conflict of interest exists, the board of directors or its assigns shall consider whether the potential conflict of interest would cause a transaction entered into by CFO to raise questions of bias, inappropriate use of CFO's assets, or any other impropriety.
3. A conflict always exists in the case of a **related party transaction** – a transaction, agreement or other arrangement in which a **related party**<sup>2</sup> has a financial interest and in which CFO or any affiliate of CFO is a participant.<sup>3</sup>
4. If the board of directors or its assigns determines that there is a conflict of interest, it shall proceed as outlined below.

## V. Procedures for Addressing a Conflict of Interest

1. When a matter involving a conflict of interest comes before the board or its assigns, the board or assigns may seek information from the director or officer with the conflict prior to beginning deliberation and reaching a decision on the matter. However, a conflicted person shall not be present during the discussion or vote on the matter and must not attempt to

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<sup>2</sup> A **related party** is:

1. a director, officer or key person of CFO or any affiliate of CFO, or
2. a relative of any individual described in (1), or
3. an entity in which any individual described in (1) or (2) has an ownership or beneficial interest of 35% or more, or in the case of a partnership or professional Corporation, a direct or indirect ownership interest in excess of 5%.

<sup>3</sup> A transaction is not a related party transaction if:

1. the transaction, or the related party's financial interest in the transaction, is *de minimis*;
2. the transaction would not customarily be reviewed by the board in the ordinary course of business and is available to others on the same or similar terms;
3. the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that CFO intends to benefit as part of the accomplishment of its mission (and that benefit is available to all similarly situated members of the same class on the same terms).

improperly influence the deliberation or vote.

## **2. Additional Procedures for Addressing Related Party Transactions**

a. CFO may not enter into a related party transaction unless, after good faith disclosure of the material facts by the director, officer or key person, the board, its assigns, or a committee authorized by the board determines that the transaction is fair, reasonable and in CFO's best interest at the time of such determination.

b. If the related party has a substantial financial interest, the board, its assigns, or authorized committee shall:

- i. prior to entering into the transaction, consider alternative transactions to the extent available;
- ii. approve the transaction by a vote of not less than a majority of the directors or committee members present at the meeting; and
- iii. contemporaneously document in writing the basis for its approval, including its consideration of any alternative transactions.

## **3. Exception For the Benefit of CFO**

- a. The board, its assigns, or committee may invite a conflicted individual to participate in discussion of the issue if the individual with a conflict of interest has personal knowledge or experience that would benefit the discussion of an issue, the outcome of which might provide that individual.
- b. The conflicted individual shall not be present during votes on the issues in question.

# **VI. Minutes and Documentation**

The minutes of any board or committee meeting at which a matter involving a conflict of interest or potential conflict of interest was discussed or voted upon shall include:

- a. the name of the interested party and the nature of the interest;
- b. the decision as to whether the interest presented a conflict of interest;
- c. any alternatives to a proposed contract or transaction considered by the board; and
- d. if the transaction was approved, the basis for the approval.

# **VII. Prohibited Acts**

CFO shall not make a loan to any director or officer.

## **VIII. Procedures for Determining Compensation**

No person shall be present for or participate in board or committee discussion or vote pertaining to:

- a. their own compensation;
- b. the compensation of their relative;
- c. the compensation of any person who is in a position to direct or control them in an employment relationship;
- d. the compensation of any person who is in a position to directly affect their financial interests; or
- e. any other compensation decision from which the person stands to benefit.