

Sample Investment Policy for Nonprofits Having Investment Assets But No Endowment Funds

(Delegation to External Agents Not Permitted)

The New York Prudent Management of Institutional Funds Act (“NYPMIFA”) requires the adoption of an “investment policy” by all corporations subject to its provisions, regardless of whether they have “endowment funds.”¹ This draft sample Investment Policy is intended for consideration by a nonprofit that (i) holds cash equivalents (such as bank deposits) as well as some longer-term investments but does not have endowment funds and (ii) has not delegated and does not wish to allow delegation of authority to manage or invest its assets to any external agents, such as an investment manager.²

*The **provisions in red are required by NYPMIFA**. Nonprofits should keep in mind that modifications to this draft sample policy may be appropriate in light of the organization’s circumstances and the investment policy adopted by the organization should reflect policies and procedures to which the organization can readily adhere. However, care should be taken to ensure that the NYPMIFA-mandated provisions are included in the organization’s policy.*

The draft sample policy is not intended as investment advice, and, except with respect to NYPMIFA, it does not contain any references to, or information regarding, state, federal, regulatory or other requirements that may be applicable to the nonprofit. Legal counsel should be consulted concerning any other provisions that may need to be included. The New York Attorney General has not approved or reviewed this draft sample policy. Thanks to those who participated in creating this sample policy: Coleen M. McGrath, Skadden, Arps, Slate, Meagher & Flom LLP; David Lowden, Stroock & Stroock & Lavan LLP; Jillian Diamont, Simpson Thacher & Bartlett LLP; Robert Vanni, Esq., Jon Small, senior consultant, Government Relations, NPCC.

Investment Policy for

[Full Name of Nonprofit] (“the Corporation”)

Adopted [Insert Date]

Purpose

The purpose of this policy is to set forth the standards and guidelines governing the investment and management of the Corporation’s financial assets. This policy is intended to be in accordance with the New York Prudent Management of Institutional Funds Act (“NYPMIFA”).³

Financial Assets of the Corporation

The Corporation’s financial assets consist of (a) funds intended to be used to cover its short-term operating and program expenses (the “Operating & Program Fund”), (b) reserve funds, which are funds to be held in reserve to support the Corporation’s future operations, serve as a resource during economic downturns or provide an additional source of income to support

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further the Corporation's mission (the "Reserve Funds"), and (c) funds which have been restricted by the donor or the Board of Directors for a specific purpose, but which do not have a restriction as to the timing of their expenditure (the "Restricted Funds" and together with the "Operating & Program Fund" and the "Reserve Funds," the "Funds").⁴ The Corporation does not have any endowment funds. Financial assets subject to a specific donor restriction as to the investment or management of such assets shall be invested and managed in accordance with the donor's restriction.

Investment and Management Objectives and Guidelines

Operating & Program Fund: The Operating & Program Fund shall be invested with the objective of preserving its assets to cover operating expenses and realizing earnings in a way that allows for immediate liquidity to meet the Corporation's ongoing programmatic and operational needs. Operating & Program Fund assets may be maintained in the checking account that the Corporation uses for day-to-day operations and may be invested in other cash-equivalent investments, such as savings accounts, money market accounts, certificates of deposit with maturities appropriate for expected needs, Treasury bills and other investments that are relatively easy to liquidate. The Corporation's professional staff from time to time will review the allocation (or the methodology of allocation) of Operating & Program Fund assets between the Corporation's checking account and its other cash-equivalent investments, determining the appropriate allocation based on the Corporation's cash-flow needs, and regularly report such allocation to the Board. The Board may direct that changes be made to such allocation and will also consider from time to time whether the Corporation's Operating & Program Fund assets are sufficient to allow for the designation of a portion of such assets to the Reserve Funds.

Reserve Funds: The Reserve Funds shall be invested with the objective of preserving the long-term real purchasing power of the Funds' assets while realizing appropriate investment income. Reserve Funds' assets may be invested in certificates of deposit, Treasury bills, mutual funds, exchange traded funds, equities, fixed income securities and, as to an appropriate portion, cash equivalent investments.⁵ The asset allocation of each of the Reserve Funds shall be determined from time to time by the Board of Directors, in consultation with any advisors if desired, which allocation shall reflect a proper balance of such Fund's investment objective, any risk tolerance standard and the need for liquidity.

Restricted Funds: The Restricted Funds shall be invested with the objective of preserving and enhancing the purchasing power of the Funds' assets while ensuring that liquidity requirements can be met. Restricted Funds' assets may be invested in certificates of deposit, Treasury bills, mutual funds, exchange traded funds, equities, fixed income securities and, as to an appropriate portion, cash equivalent investments.⁶ The asset allocation of each of the Restricted Funds shall be determined from time to time by the Board of Directors, in consultation with any advisors if desired, which allocation shall reflect a proper balance of such Fund's investment objective, any risk tolerance standard and the need for liquidity.

Diversification

Investments of each Fund will be diversified to limit the risk of loss resulting from the concentration of assets in a specific type of investment, specific maturity, specific issuer or

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sector unless the Board prudently determines that, because of special circumstances, the purposes of the Fund are better served without diversification. The Board shall review the diversification strategy periodically, provided, however, that it shall review any decision to not diversify as frequently as circumstances require but, at a minimum, annually.

Responsibilities of the Board of Directors

In managing the financial assets of the Corporation, the Board of Directors will act in good faith and with the care an ordinarily prudent person in like position would exercise under similar circumstances. When making investment and management decisions, the Board shall consider the Corporation's purposes, as well as the purposes of the specific Funds.

In making decisions regarding management and investment of the Corporation's financial assets, the Board of Directors, as required by applicable law, shall consider the following factors, if relevant:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences, if any, of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall investment portfolio of the specific Fund;
- (5) the expected total return from income and the appreciation of its investments;
- (6) other resources of the Corporation;
- (7) the needs of the Corporation and the specific Fund to make distributions and to preserve capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the Corporation.

The Board of Directors shall not make management and investment decisions regarding an individual asset in isolation but rather in the context of the specific Fund's portfolio of investments as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the Fund and the Corporation. The Board shall make reasonable efforts to verify facts relevant to the management and investment of the Funds and may incur only costs that are appropriate and reasonable in relation to the assets, the purpose of the Corporation and the skills available to the Corporation.

Within a reasonable time after the Corporation's receipt of a gift of property or other financial assets, the Board shall make and carry out decisions regarding retaining or disposing of the property, or the rebalancing of the Fund or Funds applicable to such gift in order to ensure compliance with the purposes, terms, and distribution requirements of the Corporation (including the diversification requirements and other aspects of this policy) as necessary to meet other circumstances of the Corporation and the requirements of applicable law, subject to any restrictions imposed by the terms of the gift.

The Board may delegate one or more of its responsibilities hereunder to a committee of the Board or an officer or employee of the Corporation. Any such committee or individual to whom such responsibility is delegated shall report to the Board on a regular basis and shall be subject to direction by the Board. If such responsibilities are delegated to a committee or individual, the rights and obligations set forth in this policy applicable to the Board (other

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than the right to amend this policy) shall also apply to such committee or individual, subject to the right of the Board to review and revise any decision of such committee or individual, and reports required under this policy to be made to the Board may instead be made to the committee or individual, which or who shall in turn report to the Board on a regular basis.

Review of Investment Policy

The Board will review this policy, and shall amend the policy, from time to time as necessary to reflect developments affecting the Corporation's finances and activities.

Additional Provisions That Might Be Considered for Inclusion

If the board of directors wishes to include in the organization's policy more detailed guidance, such guidance could address items such as, but not limited to:

- Asset allocation and risk and return expectations for the Reserve and Restricted Funds;
- Specific caps intended to promote diversification of the nonprofit's investment portfolio, such as caps on the market value of the portfolio that may be invested in any one industry, in the securities of any one company or in any asset class;
- Responsibilities of board committees, officers and/or staff if your board of directors has delegated investment management authority to such internal delegates;
- Whether restrictions should be imposed on the types of permitted investments for non-financial reasons (e.g., prohibitions on investments in certain industries, such as tobacco); or
- Criteria/benchmarks that will be used to evaluate the investment performance of the Reserve and Restricted Funds.

¹ NYPMIFA applies to all corporations incorporated under the New York Not-for-Profit Corporation Law or the New York Religious Corporations Law and to all education corporations as defined in Section 216-a(1) of the New York Education Law. Therefore, public charities, private foundations, social welfare organizations, trade associations, social clubs and all other entities incorporated under these laws will be governed by NYPMIFA.

² Also available on the [Nonprofit Coordinating Committee of New York's website](#) are (i) a draft sample investment policy appropriate for consideration by a nonprofit with some longer-term investments (but no endowment funds) that permits delegation of investment management authority to external agents and (ii) a draft sample investment policy appropriate for consideration by a nonprofit that holds only cash equivalents and does not have either longer-term investments or endowment funds.

³ This draft sample investment policy is not intended for consideration by nonprofits that have endowment funds; such nonprofits are subject to additional requirements under NYPMIFA that are not reflected in this draft sample policy.

⁴ NYPMIFA's rules governing the investment and management of a nonprofit's financial assets apply to the nonprofit's operating funds, as well as its reserve, restricted and endowed funds. (All such funds are referred to as "institutional funds" in NYPMIFA.)

⁵ This list is not intended to be an exclusive list of the classes of investment assets in which the Reserve Funds may be invested. In light of a nonprofit's particular circumstances, its board of directors may wish to expand this list of permissible investment assets and/or eliminate one or more of the suggested classes of investments.

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⁶ This list is not intended to be an exclusive list of the classes of investment assets in which the Restricted Funds may be invested. In light of a nonprofit's particular circumstances, as well as the liquidity needs of specific Restricted Funds, its board of directors may wish to expand this list of permissible investment assets and/or eliminate one or more of the suggested classes of investments.