

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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July 9, 2009

Members of the Board of Trustees  
Suffolk University  
c/o David J. Sargent, President  
8 Ashburton Place  
Boston, MA 02108

Re: Related Party Transactions/Conflicts of Interest Policy

Dear Trustees:

Under its authority to “*enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof,*” (see M.G.L. c. 12, s. 8), the Attorney General’s Office, through its Non-Profit Organizations/Public Charities Division (the “Division”), initiated an inquiry regarding certain related party transactions involving Suffolk University (hereinafter the “University”). The University is a Massachusetts public charity and, as such, is subject to the Division’s enforcement authority.

Specifically, the Division has reviewed matters related to transactions whereby the University procures professional strategic services through, initially, The Commonwealth Group and, more recently, WolfBlock Public Strategies, LLC<sup>1</sup> (“WPS”) (hereinafter, The Commonwealth Group and WPS will be referred to collectively as the “Contractor”, and the transactions will be referred to collectively as the “Transactions”). Robert B. Crowe, who has been a trustee of the University since 1989, has had an ownership interest in the Contractor at all times relevant to our inquiry. As Mr. Crowe is a trustee, the Transactions present a conflict of interest and constitute related party transactions.<sup>2</sup>

Related party transactions, and the conflicts of interest that are implicit in such relationships, are not, in and of themselves, inappropriate. Nevertheless, because such transactions have the potential for abuse, both the Internal Revenue Service and this Division require disclosure of such relationships in tax and annual report filings (see the Division Form PC, question 24, and the new IRS Form 990, Part IV, questions 25-28 and Schedule L).

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<sup>1</sup> We note that WPS is a wholly-owned subsidiary of the law firm WolfBlock LLP. In a March 2009 press release, WolfBlock LLP announced that it would cease operations this year. Mr. Crowe is now affiliated with Nelson Mullins LLP. This does not change our analysis.

<sup>2</sup> A conflict of interest exists when a person is in a position both to influence an organizational decision and to benefit from that decision. When the decision involves a transaction, it is known as a “related party transaction” because the two contracting parties are “related” through the person having the conflict of interest.



Consistent with the foregoing, public charities routinely adopt conflict of interest policies that require board members, officers and members of senior management to (i) disclose any relationships which might create a conflict of interest and (ii) provide a process whereby transactions are entered into or renewed with related parties in a manner which assures the best interests of the organization are being served.

We have not evaluated whether the Transactions were, or were not, in the best interests of the University nor have we reviewed the underlying contracts. Based on our limited inquiry and for the reasons set forth hereinafter, we have, however, concluded that the University and/or its trustees did not comply in all material respects with the University's long-standing written policies and procedures governing conflicts of interests intended to safeguard the University's best interests. We have also concluded that the current iteration of the policies and procedures should be revised to provide the University with additional protection and more specific guidance with respect to related party transactions. Consistent with that conclusion we have made specific compliance recommendations which the University has agreed to implement.

Our review of the matters addressed in this letter is limited to a legal assessment of whether the evidence establishes a violation of the Commonwealth's public charities laws. The Division does not express, and nothing in this letter or our findings should be construed to express, any opinion on the business judgments of the University board (the "Board") or management including, without limitation, contracting or procurement decisions. Except for the reporting obligations set forth hereinafter, this letter concludes our inquiry. Our conclusions and recommendations are based solely on the information submitted to us.

### **University Conflict of Interest Policy; The Transactions**

#### **The Conflict of Interest Policy**

The University has a long-standing conflict of interest policy (the "Policy") set forth in Article VII of its bylaws (the "Bylaws"). That Policy:

- (i) applies to all members of the Board ("Trustees") and to all officers of the administration ("Officers") (Section 1);
- (ii) defines the components of an "affiliation" that would give rise to a disclosure requirement (Section 3);
- (iii) at the first knowledge of a transaction, requires disclosure by Trustees or Officers when they or a family member are involved in a transaction with the University, or are affiliated with an entity involved in a transaction with the University (Section 3);
- (iv) prospectively, requires disclosure by Trustees or Officers concerning any relationships or business affiliations that could give rise to a conflict of interest (Section 3); and
- (v) indicates that Trustees or Officers who have a conflict of interest should not vote, or be present at the time of voting, on any matters in which they have a conflict (Section 4).

The Policy further provides that disclosures are to be made in writing to the Chair of the Board (for Trustees) and to the President of the University (for Officers), each of whom shall be responsible for the administration of the Policy as it relates to Trustees or Officers, as the case may be (Section 3). The Policy does not require the Board to consider all financial interests disclosed to the Chair or the President. The Policy was last amended in 1995.

## **The Transactions**

The University has provided the Division with copies of the minutes of a Board meeting held on May 24, 1997, at which the Board considered whether to engage the professional services of the Contractor.<sup>3</sup> As noted in those minutes, Mr. Crowe was at the time both a Trustee of the University and a principal of the Contractor. The Board voted unanimously to approve the hiring of the Contractor. According to the minutes, Mr. Crowe left the meeting during discussion and action on the matter.

In FY 2003, the University disclosed in its Form PC filings that (i) it was a party to a transaction with the Contractor, (ii) one of its Trustees had a material financial interest in the Contractor and (iii) the amount paid to the Contractor during the year was \$120,000. In its FY 2004, 2005 and 2006 Form PC filings, the University made the same limited disclosures in amounts equal to, respectively, \$120,000, \$130,000 and \$120,000. Although required, none of these disclosures provided the identity of the Trustee with a material financial interest in the disclosed transactions. Each disclosure stated that the respective transactions had been voted on by the Board, however the Division has been provided with no Board minutes to evidence such votes.

The FY 2008 Form PC filing and an amended FY 2007 Form PC filing provide a more detailed description of these related party transactions, including identifying Trustee Robert Crowe as an owner/principal of the Contractor. Amounts paid to the Contractor were, respectively, \$120,000 and \$123,237 for FY 2008 and FY 2007. While the University states therein that it believes that the amounts paid to the Contractor in FY 2008 and FY 2007 were at or below fair market value for the services rendered, no evidence to support those statements was submitted.

The University provided the Division with documentation that for FY 2005 through FY 2008, Mr. Crowe submitted to the Chair of the Board a written disclosure of his financial interest in the Contractor. The Division did not request evidence of disclosure for prior years.

## **Findings**

Based on the foregoing we have made the following findings.

- (a) Trustee Robert Crowe is “an officer, director, trustee, partner, employee or agent” of the Contractor and is thus “affiliated” with the Contractor, all as defined in Section 3 of the Policy.

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<sup>3</sup> At that time the Contractor was known as The Commonwealth Group.

The Transactions are therefore related party transactions requiring disclosure under the Policy, disclosure on the Form PC and initial and periodic determinations that they are in the best interests of the University.

(b) Mr. Crowe appropriately submitted disclosure statements setting forth his financial interest in the Contractor in compliance with the requirements of Section 3 of the Policy for each of the years for which the Division inquired. There is no documentation that Mr. Crowe's disclosure statements were reviewed by the Chair, as required by the Policy, or by the Board, any committee thereof or any other officer.

(c) There is no documentation that since 1997 when the transaction with The Commonwealth Group was first approved, the Board, any committee thereof, or any officer of the Board or of management reviewed, analyzed or concluded that these related party transactions continued to be in the best interests of the University.

Based on the foregoing findings, we conclude that while the Transactions may have been and may still be in the best interests of the University, by failing to review and act on the disclosed financial interest, the University has no adequate procedural basis or record upon which to base such a conclusion.

We further find that:

(d) For FY 2003 through FY 2006, disclosures on the Form PC of the Transactions failed to (i) identify the Trustee holding the interest and (ii) fully describe the business relationship. For FY 2007 (as amended) and FY 2008 the requisite specificity has been provided.

(e) There is no evidence that the Policy has been reviewed by the Board, or any committee thereof, since it was last amended in 1995, almost 14 years ago. While the Policy itself contains no provisions regarding mandatory or recommended review periods, we believe that periodic reviews should be conducted on a more regular basis.

### **Recommendations**

The University has agreed to take the following steps with respect to the design, content and implementation of its Policy.

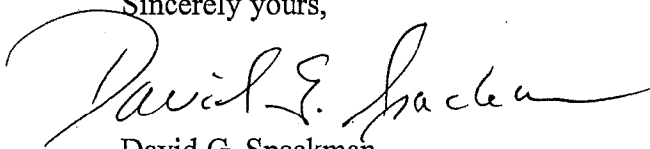
(1) The Board, with the assistance of legal counsel, will undertake a review of the Policy, including the form of its disclosure statements, and will make such changes as may be necessary or appropriate to assure that the Board or a committee thereof has the powers and procedures necessary to perform an oversight role over all related party transactions, and that the Policy provides for a process sufficient to assure that all related party transactions are in the best interests of the University. The review provided herein, and any changes arising from such review, shall be undertaken and completed no later than October 1, 2009 and the University shall notify the Division upon completion.

(2) The Board, or a committee thereof, shall review all current disclosure statements to assure that (i) all Trustees and Officers have made current filings and (ii) each disclosed financial interest has been evaluated by the Board or a committee thereof consistent with the amended Policy. The review provided herein shall be undertaken and completed no later than October 1, 2009 and the University shall notify the Division upon completion.

It is our understanding that the Board has established a committee to review the Policy, and that this committee is in the process of drafting a revised Policy to address the recommendations being made by the Division. We look forward to receiving notification of the Board's actions as provided for above.

Thank you for your cooperation in this inquiry.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David G. Spackman", with a stylized flourish at the end.

David G. Spackman

Chief

Non-Profit Organizations/Public Charities Division

cc: Paul V. Lyons, Esq. ✓  
Foley Hoag LLP