

**Board Governance and Compliance Committee
Meeting of November 16, 2018**

Minutes

Present: D. Fecher, C.D. Moore, G. Ramos, S. Wenrick

Guests: W. Branson, L. Chan, M. Grushon, D. Kimpton, E. Reinsch Friese, C. Schrader, K. Tittle

General C.D. Moore, chair, called the meeting to order at 11:38 a.m. and read the conflict of interest statement.

Chair's Report

General Moore outlined the agenda for the meeting, which included updating the committee on the status of the Wright State University Foundation's affiliation agreement process and outlining the Wright State Applied Research Corporation's (WSARC) progress in meeting the specific requirements in their Affiliated Entity Memorandum of Agreement (MOA) with the University.

An Affiliated Entity progress report on the Foundation is expected in December as well as the presentation of an annual report from WSARC as specified in the Affiliated Entity policy. WSARC will be the first Affiliated Entity to meet the intent of this annual reporting requirement.

As outlined in the Affiliated Entity Policy, each affiliated entity is expected to comply with the policy on all provisions unless there is an area of conflict for which the entity must request an exception from the Board. To date, exceptions have been granted to Double Bowler. After conclusion of the review process, the Foundation will have several areas of exception which Ms. Tittle will be discussing.

- **Foundation Affiliation Agreement Update**

Ms. Tittle indicated that the administration and the Foundation are in the final stages of securing a MOA. Both parties have reviewed several iterations of the agreement, and it is anticipated that the Foundation Board will be voting to approve a final draft in February when they next meet.

As mentioned, it appears that the Foundation will be requesting an exception in two areas of the policy requirements. The first is a technical exception that deals with University Directors as required by the Board's Affiliated Entity Policy. According to the policy, at least two members of the entity's Board of Directors have to be nominated by the University's President. As the Foundation's Code of Regulations currently reads, two Wright State Board of Trustee members are members of the Foundation's Board of Trustees. Essentially this serves the same purpose and

yields the same result, but it would still be an exception to the University Director requirement contained within the policy.

The second exemption has to do with reserve powers. Within the policy, if a majority of the directors of the affiliated entity are not University Directors, the affiliated entity's code of regulations must provide the University with certain reserve powers. In the Foundation's case, the majority of the directors are not going to be University Directors, so the policy does then require reserve powers. The Foundation's Code of Regulations and the MOA as it is currently drafted do not require the provision of reserve powers to the university. However, there are mitigating clauses and factors within the agreement to address the absence of reserve powers. Ms. Tittle will review the mitigating clauses and factors with the Committee once the proposed MOA has been finalized.

Reserve powers exist to allow the University to have input into material decisions made by an affiliated entity. General Moore indicated that one of the mitigating factors under consideration would be to place a University Trustee on the Foundation Executive Board where governance occurs. Mr. Fecher requested that the request for exceptions include how the requested exemption affects the spirit of reserve powers outlined in the policy.

- **WSARC Update**

As part of the University's implementation of the Affiliated Entity Policy, approved by the Wright State Board in 2016, the Wright State Applied Research Corporation was the first affiliate entity to ensure compliance with the policy. This included completion of a Memorandum of Agreement between WSARC and the University. Having reached their one-year anniversary, WSARC and Mr. Dennis Andersh, CEO of WSARC, will be presenting their required annual report to the University and the Board of Trustees at the Governance and Compliance Committee meeting in December. As lead-up to this meeting, General Moore reviewed WSARC's compliance and status in a number of areas outlined in the MOA that will be included in the report.

- **Insurance:** The Memorandum of Agreement requires WSARC to procure or otherwise arrange for appropriate directors' and officers' insurance (D&O insurance) as a 501(c)(3) for its directors and officers. This has been accomplished.
- **Financial statements and footnotes:** According to the most recent audit by BKD, WSARC had positive cash flow after depreciation for FY17 and FY18; WSARC is making payments to the University in less than the required 60 days;
- **Audit procedures and statements:** The most recent BKD audit (FY18) was "much improved over FY17" with no major deficiencies.

- **Tax filings (990/990-T):** This has been completed.
- **Annual budget reports:** These are completed and ready for the annual report to the Board of Trustees in December.
- **Disclosure of material contingent liabilities and litigation:** All WSARC's affiliated entities have been terminated or dissolved.
- **List of current directors and officers:** WSARC's Board of Directors consists of 3 internal Wright State employees, 1 Wright State University Board of Trustees member (currently General Moore) and 9 outside directors across the US
- **Disclosure of significant events that change the financial profile or operations of the organization:** Mr. Andersh will update the Board on WSARC's relationship with ATIC and what is being done to insure that Wright State University is not adversely impacted by ATIC's decision to sell their facility. As reported to the University, WSARC wrote off \$1.3 million because the ATIC building was sold and there was not enough equity to pay off the WSARC promissory note. However, WSARC is pursuing all possible avenues for recovery of those funds. WSARC still owes Wright State University \$580,000 of a \$1.4 million note and WSARC continues to make quarterly payments on this obligation.
- **Proof of compliance with Ohio Attorney General charitable registration requirements:** That has been done.
- **Progress report towards financial independence:** WSARC/WSRI has met this requirement since July 1, 2016 and continues to remain financially independent.

In addition to the required annual report, WSARC has provided monthly affiliated entity reports to the university demonstrating their progress in achieving full compliance with the Affiliated Entity policy.

One area that was not covered in WSARC's initial MOA, and is now being addressed, is the use of services provided by Wright State to WSARC or services provided by WSRI/WSARC to Wright State. In the interest of transparency and full disclosure, a "shared services agreement" is being developed and the plan is to have this agreement completed by year-end. This agreement reflects approximately \$300,000 of mutually beneficial services and will be discussed at the December meeting. Creation of this agreement, and the inclusion of a similar agreement in all future MOA's for all affiliated entities, reflects a best practice moving forward.

- **Good of the Order**

Mr. Fecher asked to amend the Affiliated Entity Policy to require a written legal opinion from a qualified attorney representing the University that assesses the risk posed by the affiliated entity and the protections that are in place for the University to mitigate any risks posed.

General Moore expressed agreement and suggested that 2019 would be a perfect time to review and revise the Affiliated Entity Policy that has been in place for three years. This would provide an opportunity to make the necessary modifications for strengthening the policy and addressing other areas of best practice.

The meeting was adjourned at 12:01 p.m.

Respectfully Submitted,
Deborah Kimpton