

**BROOKLYN ACADEMY OF MUSIC, INC.**  
**STATEMENT OF POLICY REGARDING CONFLICT OF INTEREST**  
**AND**  
**FINANCIAL TRANSACTIONS INVOLVING “DISQUALIFIED PERSONS”**

Members of the Board of Trustees are required to exercise their authority in the best interest of BAM, and not in their own personal interest or the interest of a third party.

Furthermore, the Board of Trustees must be cognizant of, and abide by, all laws, rules and regulations pertaining to the operation of BAM, including but not limited to Internal Revenue Service regulations prohibiting transactions that would unduly benefit persons with influence over a tax-exempt organization.

The following policy and procedures have been developed to ensure that BAM and its individual Trustees act properly and as required by law.

1. Definitions.

(a) A “Disinterested Person” is a person who is not an “Interested Person” (as defined below).

(b) A “Disqualified Person” is a person who, in the five years immediately preceding a proposed transaction, has been in a position to exert substantial influence over BAM. The term also includes any family member of such person, and any entity in which at least 35% of the beneficial control or interest is held by such person. The term “Disqualified Person” includes, but is not limited to, BAM officers, BAM Trustees, members of a committee with powers delegated by the BAM Board of Trustees, highly compensated or high-level BAM employees, and major BAM donors.

(c) “Excess Benefit” is an economic benefit given by BAM that (i) exceeds the fair market value of the benefit given to BAM in return (e.g., performance of services) or (ii) is not comparable to what is paid for the returned benefit by institutions comparable in size, type and nature to BAM or (iii) is not fair and reasonable considering all the circumstances.

(d) “Fair Market Value” is what an ordinary willing seller and an ordinary willing buyer would agree upon as a price, neither being under any compulsion to sell or buy and both having reasonable knowledge of relevant facts.

(e) A “Financial Transaction” is any agreement or action involving the assets, income or property of BAM.

(f) “Interested Person” means any BAM Trustee, BAM officer or member of a BAM committee with powers delegated by the Board of Trustees who has a “Personal Interest”, as defined below.

(g) A person has a “Personal Interest” with respect to a particular transaction or arrangement if the person, indirectly or directly:

(i) has an ownership interest (whether actual or potential) in any entity with which BAM has or is contemplating such transaction or arrangement;

(ii) has a compensation arrangement (whether actual or potential) with any person or entity with whom or with which BAM has or is contemplating such transaction or arrangement;

(iii) has a spousal or familial relationship (or its equivalent) with any person with whom BAM has or is contemplating such transaction or arrangement.

## 2. Procedures Concerning Conflict of Interest.

(a) Duty to Disclose. In connection with a proposed transaction or arrangement being considered by the Board of Trustees, or by a committee with powers delegated by the Board of Trustees, an Interested Person:

(i) will disclose to the Chairman of the Board of Trustees (or to the Vice Chairman, if the Interested Person is the Chairman) the existence of his or her Personal Interest, and all material facts relating thereto; and,

(ii) will refrain from participating in any discussion of or decision-making on such matter.

(b) Determining Whether a Conflict of Interest Exists. In connection with said proposed transaction or arrangement, the Disinterested Persons on the Board or the committee, as the case may be, will determine the following, and will decide whether to enter into the transaction or arrangement in conformity therewith:

(i) Whether the disclosed Personal Interest of the Interested Person(s) constitutes a conflict of interest, or the appearance of a conflict of interest, for BAM with respect to the transaction or arrangement<sup>\*</sup>; and,

(ii) After exercising due diligence, whether BAM can obtain a more

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For example, if a transaction is put out to competitive bid, the Personal Interest of a Trustee in one of the companies bidding may not constitute a conflict.

advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest; and,

(iii) If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, whether the transaction or arrangement is in BAM's best interest and for its own benefit (rather than the benefit of the Interested Person(s)), and whether the transaction is fair and reasonable to BAM.

(c) Recording of Proceedings. The minutes of the meetings of the BAM Board of Trustees, and any committee with powers delegated by the Board, will contain the following:

(i) the names of Interested Persons who have disclosed a Personal Interest, and the nature of the Personal Interest;

(ii) the action taken by the Board or committee to determine the existence of a conflict of interest, or the appearance of a conflict of interest, and whether a more advantageous transaction or arrangement could be obtained as per Subsection (b)(ii) above;

(iii) the final determination of the Board or committee, and its reasoning therefore, together with a record of who was present and how each person voted.

(d) Violations of the Conflict of Interest Policy. If the Board of Trustees, or a committee with powers delegated by the Board, reasonably believes that a Trustee or committee member has failed to disclose any actual or possible conflict of interest, then:

(i) in the case of a committee, the chairman of the committee will inform the Board of Trustees of the committee's belief and the basis thereof;

(ii) the Trustee or committee member who is suspected of having failed to disclose will be informed by the Board of the basis for the Board's belief and will be afforded the opportunity to respond;

(iii) if the circumstances warrant, the Board will take appropriate corrective action in accordance with BAM's by-laws.

### 3. Proceedings Concerning Financial Transactions Benefiting Disqualified Persons.

(a) The Board of Trustees acknowledges that BAM may not engage in a Financial Transaction that will provide an Excess Benefit to a Disqualified Person and that if BAM does so, it may create liability for taxes to BAM managers and/or the Disqualified Person, and may endanger BAM's tax exemption.

(b) For each proposed Financial Transaction with a Disqualified Person, the Disinterested Persons on the Board of Trustees will be furnished with a detailed description of

the transaction together with the following:

(i) the fair market value of the benefit to be paid or afforded to the Disqualified Person; or

(ii) a survey of prices (or other consideration) paid by comparable tax-exempt institutions for similar benefits; and,

(iii) if in the proposed transaction the benefit exceeds said fair market value or said comparable pricing, any additional factors that may justify paying more for the benefit.

(c) Each Financial Transaction with a Disqualified Person will thereafter be determined on the basis of a vote of a quorum of Disinterested Persons on the Board of Trustees.

(d) Recording of Proceedings. The minutes of the meetings of the BAM Board of Trustees will record the following:

(i) the terms of the Financial Transaction that was approved;

(ii) the details of the vote of the Board of Trustees approving the Financial Transaction (i.e., the total vote, and the name of each member and how he or she voted); the persons present during the debate, and the participation or recusal of any Trustee with a conflict of interest with respect to the Financial Transaction;

(iii) the reasons of the Board for approving the Financial Transaction, said reasons to be contained either in a report prepared concurrently with the vote and maintained in the Board's records or in a statement incorporated into the minutes; and

(iv) the data relied upon by the Board in making its decision, and how the data was obtained. If the Board has determined that the fair reasonable price (or other consideration) to be paid by BAM for the Financial Transaction is not fair market value, or is not comparable to what is paid for the benefit by comparable institutions, the Board will also record the difference from said fair market value or comparable pricing, and will document in detail the Board's reason(s) for approving the Financial Transaction despite the difference.