

CENTRAL INDIANACOMMUNITY FOUNDATION, INC.  
POLICY FOR GIFTS  
OF CLOSELY-HELD STOCK

Approved by the Boards of Directors of:  
*Central Indiana Community Foundation, Inc.*  
December 8, 2016  
*Legacy Fund, Inc.*  
December 6, 2016  
*The Indianapolis Foundation, Inc.*  
December 8, 2016

**I. PURPOSE.**

As a trusted philanthropic partner, the mission of Central Indiana Community Foundation, Inc. and its affiliates, Legacy Fund, Inc. and The Indianapolis Foundation, Inc. (collectively, "CICF"), is to inspire, support and practice philanthropy, leadership and service. The purpose of this policy is to govern the acceptance of gifts of closely held stock to best serve the interests of CICF and its donors, as well as to provide guidance to professional advisors in completing gifts of closely held stock. The purpose of the gift must be charitable. CICF must ensure that its donors' wishes will be fulfilled through the acceptance of any and all gifts.

**II. GENERAL GUIDELINES.**

**A. Gift Review.** Proposed gifts of closely-held stock, whether current or deferred, will be evaluated on a case-by-case basis in accordance with this Policy specifically and CICF's Gift Acceptance Policies and Procedures Manual in general. The Vice President for Development and Philanthropic Services and/or Chief Financial Officer will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of CICF. Gifts of closely-held stock will be accepted only after the requirements of CICF's policies and procedures have been satisfied and with the prior approval of the gift acceptance committee (with the assistance of the Director of Charitable Gift Planning and Legal Affairs Counsel and other staff or outside legal counsel as necessary). CICF may refuse any offered gift that is judged not to be in the best interest of CICF or the donor.

**B. Evaluation of Potential Gifts.**

**1. Type of Corporation.** On a case-by-case basis, CICF may accept stock of:

**a. C-Corporations<sup>1</sup>.**

**b. S-Corporations.** In general, due to the structure of S-corporations, any debt-financed income is likely to subject CICF to Unrelated Business Income Tax (UBIT). Additionally, the income generated by the S-corporation during the time CICF would hold it and any gain on the sale of the S-

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<sup>1</sup> The donor may be advised that if stock of a C-Corporation is held by CICF and obtains S-Corporation status, CICF must give consent for such conversion on Internal Revenue Service (IRS) Form 2553

corporation stock may be subject to UBIT. There should be adequate assurances that the affected fund will have adequate cash to pay any UBIT that may be incurred by holding or through the sale of S-corporation stock, either from the investment itself or from further contributions from the

donor. Prior to accepting the gift, the donor should agree in writing that there will be sufficient funds to pay such tax or other costs. Generally, CICF's Operating Fund will not advance funds for such expenses.

**2. Documentation.** CICF will review any relevant documentation in consideration of the proposed gift which may include, but is not limited to: a qualified appraisal and/or appraisal summary, shareholder agreements, buy-sell agreements or other agreements, proposed transfer instruments, and any proposed agreements or arrangements between CICF and the donor that pertain to the property. Such documentation may be reviewed by CICF's legal counsel.

**3. Sale or Liquidation.** As a general rule, all gifts of securities are sold as soon as possible, usually on the same day as the gift. The fund designated to receive the gift is then credited with the proceeds from the sale, after commissions and expenses, if any. In the case of gifts of stock of closely-held corporations that are not readily marketable at the time of the gift, it should appear reasonably certain that the stock proposed to be transferred to CICF will be sold or liquidated at fair value and proceeds received into a component fund of CICF within a specific time frame, which by law is not to exceed five years.

In the alternative, it should appear reasonably certain that the closely-held stock proposed to be transferred to CICF will generate annual income sufficient to provide a reasonable rate of return for the component fund into which it is received.<sup>2</sup> For purposes of this policy, the definition of "a reasonable rate of return" shall be determined by CICF, in its sole discretion. The Vice President for Development and Philanthropic Services and/or Chief Financial Officer shall have the authority to determine whether the requirements of this paragraph have been met.

In negotiating the sale of closely-held stocks, a fair market value (price per share) will be established at the time of sale. No warranty is given by CICF that the valuation will be acceptable to the IRS. In some cases, CICF may obtain an independent appraisal of the value of the stock prior to agreeing to a proposed sale of the stock.

In addition, the donor will be advised that if the stock is sold, liquidated, or otherwise disposed of within three years of receipt, per the IRS, **CICF is required to file**

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<sup>2</sup>Treasury Regulations require that CICF assure that its funds produce a reasonable rate of return. This can be particularly important for property held in designated funds, because while this requirement is applied based on the aggregate performance of most funds, it is made on a fund-by-fund basis for designated funds. See Treas. Reg. Section 1.170A-9(e)(11)(v)(F) and 1.170A-9(e)(13)(x). See Hoyt, Legal Compendium for Community Foundations

**IRS Form 8282** (“Donee Information Return”), unless the gift was valued below \$500 or was distributed for charitable purposes. See Treas. Reg. 1.6050L-1.

**Note: Excess Business Holdings.** Gifts of business interests to a **donor advised fund** may raise the issue of excess business holdings under the Pension Protection Act and Internal Revenue Code section 4943. Excess business holdings exist when the holdings of a donor advised fund together with the holdings of disqualified persons exceed 20% of the voting stock of the incorporated business, 20% of the profit interest of a partnership or joint venture, or 20% of a beneficial interest of a trust or similar entity. In such a case, CICF must divest of the excess business holdings within a period not exceeding five years. Ownership of unincorporated businesses that are not substantially related to the fund’s purposes is also prohibited.

**4. Administrative Fees.** Funds holding closely-held stock will be charged the same administrative fees as all other funds at CICF. The donor should provide adequate assurance that the affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor. All paid dividends will be used to offset all or a portion of the fee charged to the fund in the same year ending with the anniversary date of the gift. Dividends will be available for grantmaking only to the extent that they exceed fees.

**5. Tax Deductibility.** The allowable tax deduction for gifts of closely-held stock will be subject to the IRS rules for closely-held stock gifts. CICF will provide the donor with any substantiation required for the donor to obtain a tax deduction.

### **III. RESPONSIBILITIES OF THE DONOR.**

**A. Appraisal.** The donor will be **responsible for obtaining a qualified appraisal and/or appraisal summary** in compliance with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 (“Noncash Charitable Contributions”). See Treas. Reg. 1.170A-13(c).

**B. Transfer Instruments.** It is the donor’s responsibility to prepare the appropriate instruments which are necessary to transfer the stock to CICF.

**C. Documentation of Restricting or Limiting Agreements.** The donor must provide documentation of any shareholder, buy-sell, or other agreements that impose any restrictions or limitations upon the sale or transfer of the stock.

**D. Acceptance Agreement.** Prior to or upon acceptance of the gift, the donor and CICF must agree in writing to the terms of the gift, including the following items listed in Attachment 1, Sample Agreement for the Terms of a Gift of Closely-Held Stock:

**1. No Material Restrictions.** Prior to or upon transfer of the stock to CICF, the donor and CICF will sign an agreement stating the terms of the gift, which must specify that there are no restrictions on CICF’s right to use or convey the closely-held stock.

**2. Expenses Associated with the Gift.** Prior to acceptance of the closely-held stock, CICF and the donor must agree in writing on arrangements for paying expenses associated with the stock, such as commissions or potential UBIT.

**3. Administrative Fees.** The donor should provide adequate assurance that the affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor.

**E. Expenses in Preparation of Gift.** The donor is responsible for all expenses incurred during the preparation of the transfer of the stock.

**F. Discuss Gift with Professional Advisors.** The donor is encouraged to and responsible for discussing all benefits, liabilities, and tax consequences derived from the gift of closely-held stock with their professional advisors before the gift is made.

**G. Discuss Gift with Family or Interested Parties.** Donors will be encouraged to discuss contemplated gifts of real property with their family or other interested parties before the gift is made.

#### **IV. WHAT CICF WILL NOT DO**

**A. Donor Expenses.** In general, CICF's Operating Fund will **not pay for legal assistance, appraisals**, or other services or expenses on behalf of the donor. In extraordinary circumstances, the expenses will be deducted from the proceeds of the sale or otherwise charged against the fund holding the gift.<sup>3</sup>

**B. Corroboration of Value.** CICF will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.

**C. Stock Purchase Agreements.** In many cases, upon the subsequent sale of closely-held stock, there will be a stock purchase agreement setting forth the proposed terms and conditions of sale. CICF cannot join in or participate in the issuance of warranties and representations and in indemnification agreements.

**D. Pre-Arranged Re-Sale.** CICF will not participate in pre-arranging a re-sale or re-purchase of the proposed gifted stock back to the donor.

**E. Best Interest.** CICF will not accept any gift that would not be in the best interest of CICF or the donor.

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<sup>3</sup> Discharge of such expenses by CICF may be treated as taxable income if the payment of the liability would not have given rise to a deduction. See 26 U.S.C. section 108. Discharge of such expenses may also create a material restriction on the gift. See Treas. Reg. 1.507-2(a)(8)(iv)(B). See also Hoyt Legal Compendium for Community Foundations 69-70 FN 356.

**Attachment 1**  
**Sample Agreement for the Terms for a Gift of Closely Held Stock**

[DATE]

Mr. Robert A. MacPherson, Vice President of Development  
Central Indiana Community Foundation  
615 N. Alabama Street, Ste. 119  
Indianapolis, IN 46204-1498

Re: Gift of [##] shares of [ENTITY NAME] (the “Donated Shares”)

Dear Mr. MacPherson:

In connection with my irrevocable gift of the Donated Shares listed above to the [CICF/IF/LF], please be advised:

1. It is likely that the Donated Shares will be sold or liquidated at fair value and proceeds received into a component fund at [CICF/IF/LF] within a reasonable timeframe not to exceed five years.
2. I agree that there will be adequate cash in the fund holding the Donated Shares to pay administrative fees and any other costs to [CICF/IF/LF], such as Unrelated Business Income Tax, or any financial obligation to [ENTITY NAME] or related entities incurred by [CICF/IF/LF] by reason of becoming the owner of the Donated Shares.
3. There are no material restrictions which would prevent [CICF/IF/LF] from freely and effectively using or conveying the Donated Shares in furtherance of its charitable purposes.
4. I acknowledge that I am responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the Donated Shares, and that if the Donated Shares are sold, liquidated, or otherwise disposed of within three years of its receipt by [CICF/IF/LF], [CICF/IF/LF] is required to file IRS Form 8282 (“Donee Information Return”).

Sincerely,

[DONOR NAME],  
Current Owner and Donor

Agreed to and Accepted by:  
[CICF/IF/LF]

By \_\_\_\_\_  
[NAME, TITLE]