

NONPROFIT AGENDAS: STRATEGIES AND SOLUTIONS FOR CONTINUING TO GROW YOUR NONPROFIT ORGANIZATION

OCTOBER 2010

DO YOU NEED A HIRED GUN? WHEN PROFESSIONAL ASSOCIATION MANAGEMENT MAKES SENSE

Does your nonprofit need help getting off the ground? Or are you growing rapidly, but can't afford to hire more staff to support the growth? If either of these descriptions fits your organization, an association management company and its turnkey infrastructure might be your answer.

Business on their mind

Simply put, an association management company (AMC) is paid to manage your nonprofit's *business*, leaving you to take care of its *purpose*, which is likely also your passion. The AMC's many clients share overhead costs, so you pay only for the services you need. For example, you could hire an AMC to provide technology and Web site support rather than hiring an IT professional for that role.

As your programs expand, your organization also can rely on the AMC for recruitment, employee benefits packages, training and the other time-consuming tasks that normal growth entails. Most AMCs provide their services based on a flat fee or monthly retainer.

AMCs serve an array of nonprofits, including trade associations, professional societies and charitable organizations. Many serve as the organization's headquarters, providing it significant savings on space and equipment costs.

If your not-for-profit already has staff in place, the AMC can provide a menu of services such as strategic planning, membership development and database management. (See the section below entitled "Order from the menu" for a more extensive list of management services generally available.)

Self-assessment of your needs

How do you determine if you should hire an AMC? First, evaluate whether your organization is keeping pace with all facets of its organizational needs. Then evaluate whether your staff has the time, skills and tools to address those needs. If not, your choice is either to hire additional employees or enter a joint venture with an AMC that has the needed expertise.

Your board will need to identify your organization's requirements through an "organizational audit" and then decide which needs should be fulfilled by current employees and which should be directed to an AMC.

Next, identify potential AMC candidates. A good starting point is the AMC Institute, which provides a list of members on its Web site (<http://www.amcinstitute.org>). The Institute also provides a template and a four-part online request for proposal (RFP), which you can complete and send to potential candidates.

Order from the menu

A good resource for information on association management is the AMC Institute Web site (<http://www.amcinstitute.org>), where you can look for an AMC to take care of a particular need, including:

- Executive and administrative management,
- Public affairs/lobbying/government affairs,
- Membership development,
- Marketing/communication,
- Creative services (newsletters and so on), and
- Technology/Web site support.

Making the first moves

Here are some tips for evaluating AMC candidates:

Narrow your selection. Choose the top three or four firms based on the types of services they provide, years of experience and cost. It may not be prudent to select the three lowest-priced candidates. Determine if all of your organization's needs can be handled by one AMC. Also think about your short-term goals: Could future responsibilities be easily assigned to these candidates?

Conduct in-person interviews. Examine the AMC's current client types, client loyalty and whether its culture matches yours. Use the same questions for all interviews so the responses can easily be compared.

Pay attention to references. Be especially mindful of the experiences of organizations similar to yours.

A solution to your challenge?

Whether you need help with your new or growing organization, or have specific service needs, a professional AMC could be a solution. Your financial advisor can help you conduct an organizational audit to pinpoint which services you should task out.

BOARD MEMBER RESPONSIBILITIES: POWER IN THEIR HANDS

New board members typically bring specific skills to the "job" — for example, expertise in business management, finance, technology or the program areas that tie to the nonprofit's mission (health care, education and so on). Some of the tasks they take on as board members likely will relate to these skills.

But the responsibilities of board members don't end there. And as a nonprofit executive, you need to make sure that they understand their *fiduciary duties*, which they are legally required to fulfill.

What's a "fiduciary"?

The Law.com Dictionary defines a fiduciary as a person "who has the power and obligation to act for another ... under circumstances which require total trust, good faith and honesty." Nonprofit board members — whether compensated or not — have a fiduciary duty to the organization.

How does "duty call"?

Some states have laws governing the responsibilities of nonprofit board members and other fiduciaries. But in general, a fiduciary has three primary duties:

Duty of care. Board members must exercise reasonable care in overseeing the organization's financial and operational activities. Although disengaged from day-to-day affairs, they should understand your nonprofit's mission, programs and structure. And they must make informed decisions, consulting others — including outside experts — when appropriate.

Duty of loyalty. Board members must act solely in the best interests of the organization and its constituents, and not for personal gain.

Duty of obedience. Board members must act in accordance with the organization's mission, charter and bylaws, and any applicable state or federal laws.

How can conflicts of interest be avoided?

An important component of the duty of loyalty is avoiding conflicts of interest. In general, a conflict exists if your nonprofit does business with 1) a board member, 2) an entity in which a board member has a financial interest, or 3) another company or organization for which a board member serves as a director or trustee. A conflict may also exist as a result of relationships of board members to other board members.

To avoid any appearance of impropriety, treat a transaction as a conflict of interest if it involves a board member's spouse or other family member, or an entity in which a spouse or family member has a financial interest.

If there's a potential conflict of interest — whether real or perceived — the board member should disclose the relevant facts to the board and abstain from any discussion or vote on the issue, unless the board determines that he or she may participate.

As a matter of practice, always have your conflict of interest statement signed annually by board members and senior management.

When is a board member liable?

There's a common misconception that volunteers are shielded from liability. In fact, though they do enjoy some protection from financial responsibility, that protection isn't absolute.

The Volunteer Protection Act of 1997 (VPA) protects volunteers against liability for negligence committed when acting within the scope of their employment (except when operating a vehicle). Under VPA, a volunteer is someone whose yearly compensation (in money or other value) is no more than \$500.

But the law doesn't protect volunteers who cause harm through "willful, criminal, or reckless misconduct, gross negligence, or a conscious, flagrant indifference to the rights or safety of the person harmed." And VPA limits liability only to third parties. It doesn't affect a volunteer's liability to the organization itself. Board members who violate their duties may be held personally liable for any financial harm the organization suffers as a result.

Spreading the word

For many incoming board members, the concept of fiduciary responsibility will be new. So it's important to make this information a part of their orientation. Include material in your board manual, present a handout before the member's inaugural meeting or structure a panel discussion. Just make sure that the word gets out.

NINE STEPS TO DESIGNING A SOUND INVESTMENT POLICY

Not-for-profits need to develop formal investment policies that reflect their intentions and support their organizations' strategies as they move forward. And it's management's responsibility to develop and execute these policies, and hire and oversee the professionals that handle the investments. Requirements of both the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and the New York Prudent Management of Institutional Funds Act (NYPMIFA), which was enacted on September 17, 2010 and is effective for fiscal years ending on or after September 30, 2010, as well as the need to report this information in the nonprofit's audited financial statements make these actions a must.

Chart your course

The following steps for developing an investment policy and its accompanying objectives and strategies may be helpful.

1. State your investment objectives and philosophy. What do you hope to accomplish in your investment policy? General objectives should address return and risk. You may want to include details such as spending rate, assumed rate of inflation, investment management fees, and any desired real portfolio growth to reach long term goals. Also, how much risk is your nonprofit allowed to experience?

2. State your constraints. Liquidity and time constraints will likely top your list. Does your organization, for instance, rely on investments to “throw off” a certain percentage of income each year to meet spending needs and expenses? For example, your policy could state that your organization may withdraw 5% of its investment income annually for operations. And what’s the time horizon of your investments? Is their purpose largely to support endowments? You could note that an endowment has “a long life and should be managed with a time horizon much longer than the normal investment cycle” — for instance, 30 to 50 years.

3. Define your return measurement objectives. This is *how* your policy will meet its goals and how they will be measured. Your policy may state simply that “assets will be invested to generate appreciation and/or dividend and interest income” and, to accomplish this goal, the organization will diversify its assets.

4. Define volatility and organizational risk. What do these mean for your organization?

5. Specify your spending rate. This will likely be a percentage of total return. But how do you define “total return”? Many organizations adopt an average of the trailing 36 months.

6. Give asset allocation special attention. Asset allocation is one of the most important decisions your investment committee can make. Base the allocation on all of the factors discussed above — it should be commensurate with your acceptable amount of risk and expected return.

Your investment policy might detail asset allocation, in general, as follows:

| | |
|---------------------------|------------|
| Total equity | 50% |
| Total alternatives | 14% |
| Total fixed income | <u>36%</u> |
| Total | 100% |

The policy might further break down asset allocation into subcategories, such as:

| | | |
|-------------------------------------|------------|------------|
| Growth assets | | |
| U.S. all-cap stocks | 12% | |
| U.S. large growth stocks | <u>10%</u> | |
| <i>U.S. equity</i> | | 22% |
| International large stocks | 21% | |
| International merging market stocks | <u>7%</u> | |
| <i>International equity</i> | | <u>28%</u> |
| Total growth assets | | 50% |
| Risk reduction assets | | |
| U.S./global fixed income | | 26% |
| Absolute return | | <u>10%</u> |
| Total risk reduction assets | | 36% |
| Inflation protection assets | | |

| | | |
|--------------|--|-------------------|
| | U.S. inflation protected fixed | 5% |
| | Real assets | 9% |
| | Total inflation protection assets | <u>14%</u> |
| Total | | 100% |

Be sure to review and revise your allocation strategies regularly. Given U.S. market volatility, many organizations may have revised their policies to move most investments into safer assets, such as fixed-income securities (for example, Treasury bills).

7. Detail permissible investments. This would include real estate investment trusts (REITs), domestic large-capitalization equity securities, or cash equivalents. Investments should be consistent with your mission.

8. State your policy on portfolio rebalancing. Your investment team can rebalance the portfolios periodically to realign with the investment allocation. Some policies state that rebalancing must occur every quarter. Others state that rebalancing will take place when there's a certain percentage deviation from the asset allocation policy.

9. Create performance goals for investment managers and consultants. In particular, note in what situations managers and consultants will be terminated: for example, if the investments are consistently out of balance with the asset allocation policy.

Have your policy reviewed

Incorporating these provisions in your investment policy will help ensure that your nonprofit meets UPMIFA/NYPMIFA requirements. But always review your policy and any revisions with your accountant or attorney.

Making your policy complete

There are other components you may want to incorporate in your formal investment policy. Although not required, their inclusion makes for a more complete depiction of your objectives.

- The policy's purpose — although you may think it's obvious, indicate what the policy sets forth to do.
- A delegation of responsibilities and authority — detail the expectations for, and functions of, the general board, investment committee, investment advisors, managers and custodians; and specify how brokers and advisors will be selected.
- A conflict of interest statement — incorporated in the policy, it should state that written disclosure of any conflicts is required, and that the investment committee can ask those with a conflict to excuse themselves from voting.
- The investment process — outline how investment information will be monitored and communicated.
- A formal procedure for revising the policy — how often will it be reviewed and amended? What changes will require board approval?

NEWS FOR NONPROFITS

Gain tax breaks by hiring before year end

The Hiring Incentives to Restore Employment (HIRE) Act, signed into law last March, creates two tax incentives for hiring the unemployed. Nonprofits are eligible for both, but you must act soon — qualifying hires must be made by Dec. 31. Here's a closer look at the two breaks:

1. Payroll tax exemption. This is an immediate incentive for hiring certain unemployed workers. Essentially, employers that hire such workers after Feb. 3, 2010, and before Jan. 1, 2011, can qualify for an exemption from the employer's portion of Social Security taxes on wages paid to these workers after March 18, 2010, and before Jan. 1, 2011.

These newly hired employees must not have been employed for more than 40 hours during the prior 60 days ending on their start date, and they must sign an affidavit stating so. Also, the new employee can't replace another employee unless that person quit or was discharged for cause.

You'll still need to withhold the employee's 6.2% share of Social Security taxes, as well as income taxes. Note, however, that this incentive will have no effect on the employee's future Social Security benefits. Your nonprofit can claim the exemption on the federal employment tax return, Form 941, filed with the IRS.

2. Retention credit. The retention credit has three main requirements. First, an organization can qualify for this credit only if it qualified for the payroll tax exemption for the new hire.

Second, the organization must keep the employee on its payroll for at least 52 consecutive weeks. So, if a new hire voluntarily leaves after 50 weeks, the organization won't qualify for the credit — not even a prorated amount.

Third, the employee must be paid an amount equal to at least 80% of his or her first six months of wages during the last six months.

The amount of the credit is the lesser of \$1,000 or 6.2% of wages paid to the employee during the 52-week period. Thus, for an organization to claim the maximum \$1,000 credit, the qualifying employee must earn more than \$16,130 during the 52 weeks.

Although the details on how this credit will be applied to tax-exempt entities have not, as of this writing, been released, claiming the credit will likely require your organization to file Form 990-T, "Exempt Organization Business Income Tax Return," for 2011. Look for additional guidance in the coming months.

SPOTLIGHT ON MP&S

MP&S Launches Online Tax Guide

To facilitate access to the latest tax rules and regulations, the firm has launched an online tax guide. This web-based tax guide is updated as changes occur. A link to the guide appears at the end of the Tax services section on our website. If you have questions about anything you read in the tax guide, please contact your MP&S advisor.

All Quiet on the Corporate Fraud Front? Think Again

Financier Worldwide magazine features Director David Gannaway's thoughts on why the economy may be to blame for surges in corporate fraud activity and the types of perennial fraud that can easily go undetected. Outlining his recommendations, David offers ways companies can discover potential vulnerabilities and why risk assessment is key.

MP&S Launches Global Start-Up Series for Emerging Technologies

Senior Consultant Jeanne Goulet has authored an article that serves as an introduction to a series of tax publications focusing on the six basic concepts that a CEO/founder of a start-up needs to know about international tax law and practice before going global.

The Firm Lands Top Spot for Forensic Accounting In *New York Law Journal* Survey

In a readership survey of the New York legal community conducted by the *New York Law Journal*, MP&S was chosen as one of the top three accounting firms for "Best Forensic Accounting." MP&S was the only mid-sized firm to be ranked among the top three firms in this category.

MP&S FAST FACTS

- Among the 35 largest accounting firms in the nation and a leader in accounting and auditing (*Accounting Today*)
- The 13th largest accounting firm in the New York Area (*Crain's New York Business*)

FOR FURTHER INFORMATION

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