

**THE GREATER CINCINNATI FOUNDATION
POLICY AND PROCEDURE
FOR POTENTIAL GIFTS OF CLOSELY-HELD STOCK**

Adopted May 28, 1997
Updated August 1, 2008

I. AUTHORITY TO NEGOTIATE

The President, the Vice President for Giving Strategies, and the Vice President for Finance and Administration will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of The Greater Cincinnati Foundation. Assuming such activities follow approved procedures, this authority to act will not require review or further approval by the Governing Board. The staff reserves the right to involve the Foundation's legal counsel in reviewing agreements prior to accepting them. Such review is not mandatory.

II. GENERAL GUIDELINES

There are excellent tax incentives for contributing stock of a closely-held corporation to a fund in GCF. If some or all of the stock can be contributed to a component fund of GCF before the terms of a sale of the corporation are completed, considerable financial resources can be made available for charitable purposes at the lowest after-tax cost to the donor.

Sometimes donors will be interested in giving closely-held stock to GCF even if the business is not likely to be sold. Typically, the donor contributes shares of stock to a component fund in the Foundation and the stock is later sold for cash by the Foundation. In such instances, the Foundation will not guarantee or pre-arrange such sale or make any other agreement that might imply or cause a material restriction to be imposed upon the contribution.

As a general rule, gifts of securities are sold as soon as possible, usually on the same day as the gift. The fund which the donor established 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 reasonably appear that the stock will be sold or converted into income-producing property within a specific time frame, not to exceed three to five years. Treasury Regulations require that GCF 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).

Note: 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 20% of a beneficial interest of a trust. In such a case, GCF must divest of the excess business holdings within a period not exceeding five years.

III. RESPONSIBILITIES OF THE DONOR

A. The donor will be **responsible for obtaining a qualified appraisal** complying 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(a).

B. It is the donor's responsibility to prepare the appropriate instruments which are necessary to transfer the stock to the Foundation. **All proposed transfer instruments may be reviewed by the Foundation's legal counsel prior to acceptance** by the Foundation – at the staff's discretion.

C. Funds holding closely-held stock will be charged the same administrative fees as all other funds at the Foundation. There should be 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 account in the same year ending with the anniversary date of the gift. Dividends will be credited to the donor's fund only to the extent that they are offsetting fees.

D. The Foundation's legal counsel shall review any shareholder, buy-sell, or other agreements that impose any restrictions or limitations upon the sale or transfer of the stock.

IV. PROCEDURE FOR ACCEPTING CLOSELY-HELD STOCK

A. After the requirements of this Policy and Procedure have been satisfied, the President, Vice President for Giving Strategies or the Vice

President for Finance and Administration will have the authority to accept or refuse a gift of closely-held stock.

B. The President, Vice President for Giving Strategies or Vice President for Finance and Administration may refuse any offered gift of closely-held stock that is judged not to be in the best interests of the Foundation.

C. Prior to or upon transfer of the stock to the Foundation, the donor and the Foundation will sign an agreement (approved by legal counsel) stating the terms of the gift, which shall specify that there are no restrictions on the Foundation's right to use or convey the property. (See sample at Attachment 1.)

D. 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 the Foundation that the valuation will be acceptable to the IRS. In some cases, the Foundation may obtain an independent appraisal of the value of the stock prior to agreeing to a proposed sale of the stock.

E. In addition, the donor will be advised that if the property listed on IRS Form 8283 is sold, liquidated, or otherwise disposed of within three years of receipt, **GCF is required to file a separate report within 125 days with the IRS on IRS Form 8282** ("Donee Information Return") and disclose facts about the disposition. See Treas. Reg. 1.6050L-1.

V. WHAT THE FOUNDATION WILL NOT DO

A. Except in extraordinary circumstances, the Foundation will **not pay for legal assistance, appraisals** or other services on behalf of the donor.

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

C. 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. The Foundation cannot join in or participate in the issuance of warranties and representations and in indemnification agreements.

_____, 20__

The Greater Cincinnati Foundation
200 West Fourth Street
Cincinnati, Ohio 45202-2775
Attention: _____

Re: Gift of Stock

Dear _____:

In connection with my gift of _____ shares of _____ Corporation to The Greater Cincinnati Foundation (GCF), please be advised:

(1) It is likely that the stock will be sold or converted into income-producing property within approximately five years.

(2) I agree that there will be adequate cash in the fund holding the stock to pay administrative fees, either from the investment itself or from further contributions which I will make.

(3) There are no material restrictions which would prevent GCF from freely and effectively using or conveying the stock 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 contribution, and that if the stock is sold, liquidated, or otherwise disposed of within two years of its receipt by GCF, GCF is required to file a separate report within 125 days with the IRS on IRS Form 8282 ("Donee Information Return").

Very truly yours,

Agreed to and Accepted by:
The Greater Cincinnati Foundation

By _____