

**Gemini Board of Directors
Policy on Conflict of Interest**

November 2006

Principle

The Gemini Board is committed to having its members conduct themselves in accordance with the highest standards of integrity and ethics, and in compliance with applicable norms of behavior related to conflict of interest and objectivity in research. It is essential that the work of the Board not be compromised by any significant personal, scientific, and professional conflict of interest.

Context

The Association of Universities for Research in Astronomy (AURA) has an obligation to carry out selection processes where conflicts of interest (and apparent conflicts of interest) are minimized or eliminated. The Gemini Board approves awards and the National Science Foundation (NSF), as the Executive Agency, conveys the authority to AURA to act on those awards. The Gemini Board is not subject to NSF internal policies. Therefore, the Gemini Board has elected to articulate conflict of interest terms of reference, recognizing the need to maintain a suitable level of balance and expertise as well as appropriate small partner representation and participation, and acknowledge these terms and guidelines through a Board resolution.

The conflict of interest terms of reference have been developed to ensure that potential personal, scientific and professional conflicts are disclosed by Gemini Board members, documented in the record of the Gemini Board, reviewed by the Board Chair in consultation with the Executive Agency and Designated Members, as necessary, and a satisfactory resolution reached.

Definitions

The Gemini Board recognizes that appointed and Designated Board members (as defined in the International Gemini Agreement between the agencies) serve to represent, among other interests, those of their respective countries, managing agencies, and/or appointing organizations. As such, these partner interests normally are considered beyond the bounds of the conflict of interest articulated within the guidelines and terms of reference herein.

With reference to usage within this document, defining terms, abstracted from the International Gemini Agreement, are adopted as:

"Designated Members," means those members of the Gemini Board authorized to speak on behalf of the Parties on matters before the Gemini Board (section 1.7);

"Parties," means the parties to this Agreement and includes the Partners (section 1.21); and

"Partners," means the National Science Foundation (NSF), PPARC (and its antecedent), and the National Research Council (NRC) (section 1.22).

The Gemini Board acknowledges each Party having a member on the Board shall appoint a member as its "Designated Member" and that Designated Member shall have authority to speak for that Party on matters before the Board (section 9.6).

The term conflict of interest as defined by the Gemini Board, involves any situation where any financial or other interests could (1) impair the individual's objectivity or (2) create an unfair competitive advantage for the individual or an organization with which they have common interests.

Conflict of interest may result from (1) external relationships that directly or indirectly affect the financial interest of an individual Gemini Board member, (2) decision-making processes that result in allocation of resources, including but not limited to contracts, studies, work packages, observing time, etc. that directly or indirectly affect the scientific interest of an individual Gemini Board member or close scientific collaborators, or (3) direct and predictable actions affecting the financial interest of organizations within which the individual is an officer, director, trustee, partner, or employee.

Discussion and Concepts

Conflict of interest requirements are *objective* and *prophylactic*. Conflict of interest requirements are objective standards designed to eliminate specific, potentially compromising situations from arising, and thereby to protect the individual, the other members of the Gemini Board, the Gemini Observatory, and the public interest of the Gemini partnership. The Gemini Board and the Gemini Observatory should not be placed in a situation where others could reasonably question, and perhaps challenge, the work and decisions of the Gemini Board simply because of the existence of conflict of interest.

The term "conflict of interest" applies to only *current interests*. It does not apply to past interests that have expired, no longer exist, and cannot reasonably affect the current behavior. Nor does it apply to possible interests that may arise in the future but do not currently exist, because such future interests are inherently speculative and uncertain. For example, a pending formal or informal application for a particular job with an organization or research group under consideration for contract award is a current interest, but the mere possibility that one might apply for such a position with that organization or research group in the future is not a current interest.

The term "conflict of interest" applies not only to personal interests of the individual Gemini Board member but also to the *interest of others* with whom the Board member has substantial financial and/or close scientific interests, if these interests are relevant to the Gemini Board actions and activities to be performed. In assessing an individual's potential conflicts of interest, consideration must be given to the interests of the individual but also to the interests of the individual's employer, the individual's close scientific collaborators and others with whom the individual has substantial common financial interest.

The preeminent objective of the conflict of interest inquiry in each case is to identify whether there are interests - primarily financial in nature, although

scientific interest may be relevant - that conflict with the Gemini Board service of the individual because these external relationships could impair the individual's objectivity or could create an unfair competitive advantage for any person or organization. The fundamental question in each case is does the individual, or others with whom the individual has substantial common financial interests or close scientific collaborative interests have interest that could be directly affected by the outcome of a Gemini Board action?

The application of these concepts to specific scientific and technical studies and procurement awards must necessarily be addressed in each case coming before the Gemini Board for consideration in a consistent and timely fashion on the basis of the particular facts and circumstances involved.

Rights and Responsibilities

It is the right and responsibility of each Gemini Board member to invoke commonly acceptable, typical considerations and best-practice metrics to assess whether potential financial (both personal and institutional), scientific (both personal and institutional), professional (both personal and institutional), or other (both personal and institutional) conflict of interest exists that are relevant to the functions to be performed in the selection of, evaluation of, and potential award of major contracts, scientific studies, or technology development programs on behalf of the Gemini Observatory.

Disclosure Process

The appointing organization and the Designated Member, with assistance from the Executive Secretary of the Gemini Board, shall provide these guidelines and terms of reference to all Gemini Board members. The Designated Member, appointee, and the appointing organization should review and discuss concerns regarding potential conflicts arising as a result of Gemini Board service directly with the individual appointee as necessary. Outcomes of these discussions should be communicated to the Gemini Board Chair and the Executive Secretary of the Gemini Board as warranted.

The Gemini Board Chair, in consultation with the Executive Agency, Designated Member, and appointing organization, as necessary, shall have the responsibility of bringing the disclosure of any conflict of interest of any individual or individuals to the attention of the Gemini Board prior to the consideration, discussion, or action regarding agenda items related to Gemini Board business. Prior notification is assumed to be at least 72 hours in advance of Board action.

Undeclared potential conflict of interest concerns also can be forwarded in writing to the Executive Secretary of the Gemini Board, who would communicate, in confidence, with the Gemini Board Chair and the Executive Agency. The Executive Agency and the Gemini Board Chair shall then work with the senior members of the partnership to resolve the issue.

Review and Resolution Process

The Gemini Board Chair, in consultation with the Executive Agency, Designated Member, and appointing organization, as necessary, shall ensure that the

disclosure of conflict of interest is evaluated in an objective, reasonable, fair, and timely manner guided by the concepts and principles contained herein.

The evaluation shall:

- Determine if disclosure is required;
- Identify and discuss the conflicts (real, potential, or perceived);
- Clarify the issues and how they relate to pending Gemini Board actions;
- Ascertain the category (degree) in which the potential conflict falls;
- Develop possible remedies.

The potentially conflicted Gemini Board member may also suggest to the Gemini Board Chair mechanisms to manage any potential conflicts of interest, including exclusion from decision-making process, voting recluse, no action, and describe reasons for recommending such strategies.

The Gemini Board Chair shall have the responsibility for reporting a finding on the appropriate course of action. The Gemini Board Chair, at their discretion, may request concurrence based on the majority vote of Gemini Board members in attendance at the meeting (exclusive of the individuals under discussion). Notice of concurrence deliberations in the minutes of the Gemini Board shall including a brief executive statement articulating the position of the Gemini Board regarding its action.

The Gemini Board Chair, communicating through the Executive Secretary of the Gemini Board, also can request a Board consensus by email majority vote. This process shall include advanced confidential dissemination of the conflict of interest charge and a finding summary to Board members, with a response to the Executive Secretary required within 3 days of receipt.

As a matter of practice, Gemini Board members are bound to abide by processes and outcomes to resolve personal, scientific, and professional conflict of interest.

Further References

"Guidelines of Dealing with Faculty Conflicts of Commitment and Conflicts of Interest in Research." Washington, D.C.: Association of American Medical Colleges, 1990.

"Scientific Integrity: An Introductory Text with Cases." Francis L. Macrina, American Soc., Microbiology Press, 1995.

"Responsible Science: Ensuring the Integrity of the Research Process." Washington, D.C.,: National Academy Press, 1992.

"National Research Council Conflict of Interest Disclosure Documents." Washington, D.C.: National Academy BI/COI FORM 3, 2003 (primary source and template for this document, used with permission).