



COMF: What Happens Next?

Diana Conti, COM Trustee/COMF Director

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COMF RECAP

- The audit was completed in April 2013
- \$464,464 was misspent by the COMF board. Restricted funds were used for unbudgeted, unrestricted purposes (legal fees, consulting, etc.).
- Significant material findings and accounting weaknesses cited. Board oversight and approval of unbudgeted expenditures was inadequate.
- All of the COM Program Funds were depleted.
- Endowed restricted funds for scholarships and programs remain intact.
- No funds remaining for ongoing operations.

Current Status

- Approximately \$4.2 million in assets remain. Endowed funds allow only the use of investment gains.
- \$43,470 was awarded for scholarships Spring 2013.
- \$50,000 (estimated) available for scholarships for Spring 2014.
- COM oversees the scholarship process.

Board Members and Insurance

- In September 2012, previous board cancelled all insurance, except a rider to protect board directors who were active at that time, including David and Diana who were ex-officio members.
- New members could not be covered under the rider.
- Insurance broker submitted application to seven carriers for Directors and Officers Insurance.
- All carriers declined coverage based on current financial condition and claims history.

D & O Insurance Claims

- Only David and Diana have standing to seek recovery of misspent funds from other board directors based on breach of fiduciary duty.
- AG's office declined to prosecute claim against former board directors for breach of fiduciary duty in absence of fraud or theft.
- D&O insurance would not cover liability of former board directors because the policy excludes actions board directors take against each other. Thus, no insurance recovery is available.

Available Funding

- COMF investments earned approximately \$404,000 in FY 2012-3.
- COMF investments projected to earn \$315,000 in FY 2013-14.
- COMF owes COM approximately \$120,000 for the expenses it had to cover for costs associated with the audit, legal expenses and other miscellaneous bills that were outstanding.
- Past practice had been to charge a 5% fee to donor and program funds to manage operations.
- COMF can no longer provide that service due to lack of funding for staff and inability to meet by-laws requirement for board members (due to lack of insurance coverage).

Today's Financial Picture

- \$4.2 million in assets designated for endowed scholarships and programs.
- COMF investments projected to earn \$315,000 in FY 2013-14 which could be distributed for scholarships and to partially pay debt owed to COM and partially replenish depleted program funds.
- COM now administering scholarships.
- Replenishing misspent donor funds is first priority. Five percent (5%) fee does not generate enough to operate, and it is not likely that donors would appreciate being charged a fee to pay themselves back.
- COMF cannot obtain insurance coverage.

Dissolution

- Only viable course of action at this point is dissolution.
- No insurance coverage for new board directors. Insurance rider for David and Diana expires in September 2015.
- Investment earnings goes to scholarships and to repay misspent donor funds.
- The \$250,000 needed for bare minimum staffing is not there. COM cannot use its funds to support a separate non-profit organization.
- Dissolution plan requires court approval or AG's waiver of objections and distribution of assets to a 501(c)(3) organization.

Distribution of Assets

- Per COMF Articles of Incorporation, when the corporation is dissolved, the remaining funds must be transferred to a 501(c)(3) tax-exempt organization.
- COM has tax-exempt status under section 170(c)(1).
- Crowe Horwath opined that COM's tax-exempt status is comparable to 501(c)(3) status, with no additional restrictions for donors and no conflict of interest.
- The opinion also states that COM could obtain 501(c)(3) status.
- We proposed to the AG to dissolve and distribute the assets to COM, taking the position that COM's section 170(c)(1) status was equivalent to section 501(c)(3) status.
- The AG's office provided a preliminary opinion that it would require compliance with COMF's articles with distribution to an organization with section 501(c)(3) status.
- COM must obtain section 501(c)(3) status for COMF to distribute assets to COM. This would require BOT action.

Marin Community Foundation?

- Explored the feasibility of distributing the assets to Marin Community Foundation (MCF).
- This would require giving ownership and control of funds to MCF.
- We met with MCF's CFO. He indicated MCF's role is to serve as investment manager – not to take ownership of the assets.
- The dissolution of COMF requires that the assets be relinquished to another non-profit organization. If the assets do not go to COM they would have to go to another non-profit organization, leaving COM with no control over the funds.

Next Steps

- BOT decision to obtain 501(c)(3) status for the District from the IRS.
- After receipt of 501(c)(3) status, provide written notice to the AG of decision to dissolve COMF and distribute assets to COM.
- With the notice, request a written waiver from the AG permitting a distribution to the District without a court order.
- If the AG declines to provide the written waiver, file a petition in Marin County Superior Court seeking a decree approving the proposed distribution to the District.