

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION

EXH	MOTION <i>White</i>
	SECOND <i>Mayer</i>
	ACTION APPROVED BY THE REGENTS
NOTE:	APR 21 2005

REQUEST FOR ACTION

Subject: Donor Pooled Income Fund

Action Requested: (1) Authorization to Execute a "Release of Power to Adjust from Principal to Income"; and
(2) Authorization to Execute an Amendment to the Donor Pooled Income Fund Declaration of Trust to Change Its Valuation Dates

Background and Summary:

The University of Michigan Donor Pooled Income Fund (DPIF) is a gift vehicle that was established to enable friends of the University to make tax-deductible gifts to the University of Michigan while retaining, or giving to another, the right to receive for life the current income earned by the DPIF. Current income includes dividends and interest earned and is intended to exclude any capital appreciation.

The University is trustee of the DPIF. The DPIF is not a tax-exempt entity but derives certain tax benefits by virtue of its status as a qualified pooled income fund.

Release of Power to Adjust from Principal to Income. The DPIF governing documents provide that "... at no time shall any profit or loss resulting from any change in form of principal ever become distributable or be distributed to any donor or beneficiary, other than the University, as income." As a result, long-term capital gains of the DPIF are intended to be permanently set aside for charitable purposes and deductible by the DPIF for federal income tax purposes.

Effective as of September 1, 2004, the State of Michigan adopted the Michigan Uniform Principal and Income Act (Act). The Act, under certain circumstances, authorizes a trustee to adjust between principal and income to the extent the trustee considers necessary to administer the trust impartially for the benefit of all beneficiaries. However, the Act mandates that a trustee not make an adjustment from principal to income if that adjustment would diminish any amount that is permanently set aside for charitable purposes under the terms of the trust, as is the case with the DPIF.

To ensure the continued availability to the DPIF of the income tax deduction for long-term capital gains under these circumstances, Internal Revenue Service Regulations require action in respect to the manner of determining income of the DPIF. This action is required within 9 months of the effective date of the Act, which establishes a deadline of June 1, 2005.

The attached Release is intended to satisfy Internal Revenue Service requirements in respect to the determination of the DPIF's income. In particular, the attached Release

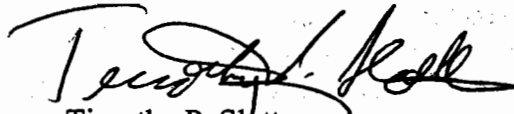
will affirm that all long-term capital gains of the DPIF are permanently set aside for charitable purposes and will, thereby, assure the continued deductibility of long-term capital gains realized by the DPIF. We therefore recommend that the attached "Release of Power to Adjust from Principal to Income" be authorized and adopted.

Amendment to the DPIF Declaration of Trust to Change Its Valuation Dates. Federal tax rules require that a pooled income fund's valuation dates, referred to as "determination dates," include the first day of the taxable year and at least three other days within the taxable year. Currently, the DPIF governing documents provide that the valuation dates shall be the first day of each month during each taxable year of the DPIF. However, other operating funds of the University are valued on the last day of each month. Valuations of the DPIF can be done more efficiently if they are more closely aligned with other valuations done by the University for other investment funds. Accordingly, the proposed amendment will change the DPIF's determination dates to be the first day of the taxable year and the last day of each month in the taxable year. We recommend that the attached amendment to the DPIF Declaration of Trust be authorized and adopted.

In addition to the proposed amendment, for reference purposes pertinent language of the DPIF governing documents is also attached, with new language underlined and deleted language indicated by strikethrough.

The Regents of the University of Michigan, as trustee of the DPIF, has the authority to adopt these changes under the terms of the DPIF governing documents. DPIF donors and participants shall be promptly notified of these changes.

Respectfully submitted,



Timothy P. Slottow
Executive Vice President and
Chief Financial Officer

April 2005
Attachments

Release of Power to Adjust From Principal to Income

This Release of Power to Adjust from Principal to Income ("Release") is made by the Regents of the University of Michigan ("University"), a Michigan constitutional corporation, effective as of September 1, 2004.

RECITALS:

- A. The University established The University of Michigan Donor Pooled Income Fund ("DPIF") under a Declaration of Trust executed January 15, 1975. The DPIF was established to enable friends of the University to make tax-deductible gifts to the University while retaining or giving to another the right to receive for life a proportionate share of the income earned by the DPIF.
- B. The Internal Revenue Service ruled on May 14, 1975 that the Declaration of Trust meets the requirements of a pooled income fund as defined in Section 642(c)(5) of the Internal Revenue Code.
- C. Subsequently, the DPIF has been amended by certain documents dated February 1, 1977, February 8, 1991, December 8, 1995 and May 14, 1998 (collectively, with the Declaration of Trust, the "Governing Documents").
- D. Under the Governing Documents, the University is trustee of the DPIF.
- E. Section 2.4(B)(4) of the Governing Documents provides that "... at no time shall any profit or loss resulting from any change in form of principal ever become distributable or be distributed to any donor or beneficiary, other than the University, as income."
- F. Because the profits derived from the sale of DPIF assets are thus permanently set aside for the University, long-term capital gains of the DPIF are deductible by the DPIF for federal income tax purposes, in accordance with Section 642(c)(3) of the Internal Revenue Code.
- G. The State of Michigan has adopted the Michigan Uniform Principal and Income Act ("Act") with an effective date of September 1, 2004.
- H. The Act, under certain circumstances, authorizes a fiduciary to adjust between principal and income to the extent the fiduciary considers necessary, to administer a trust or estate impartially for the benefit of all beneficiaries.
- I. However, if the University as trustee of the DPIF, were to adjust principal of the DPIF to income, by either taking into account unrealized appreciation in the value of the DPIF's assets or by allocating any amount of net long-term capital gains to income for distribution to DPIF participants, long-term capital gains would not be permanently set aside for the University. As a result, the DPIF would not be entitled to the tax deduction for long-term capital gains otherwise allowed by Section 642(c)(3) of the Internal Revenue Code.
- J. Section 104(4) of the Act mandates that a fiduciary shall not make an adjustment from principal to income if that adjustment would diminish any amount that is permanently set aside for charitable purposes under the terms of the trust. Because Section 2.4(B)(4) of the DPIF Governing Documents requires that profits derived from the sale of DPIF assets must be permanently set aside for the

University, the University believes that in fact it does not have the power under the Act to adjust DPIF principal to DPIF income.

- K. Section 104(6) of the Act authorizes a fiduciary to release the power to adjust from principal to income (1) if the fiduciary is uncertain about whether possessing or exercising the power will diminish any amount permanently set aside for charitable purposes under the terms of the trust or (2) if the fiduciary determines that possessing or exercising such power will or may deprive the trust of a tax benefit.
- L. The University desires to affirm that all long-term capital gains of the DPIF are permanently set aside for charitable purposes under the terms of the Governing Documents and, thereby, to maintain the continued deductibility of long-term capital gains realized by the DPIF as permitted by Section 642(c)(3) of the Internal Revenue Code.

NOW, THEREFORE, THE UNIVERSITY DECLARES as follows:

1. The University releases any power that it may possess, by virtue of the Act or otherwise, to adjust by allocation of DPIF principal to DPIF income.
2. This Release of the Power to Adjust from Principal to Income shall be permanent and irrevocable.
3. The University reaffirms its continuing intention that the DPIF be a qualified pooled income fund under the Internal Revenue Code, deriving all tax benefits available to the DPIF as a qualified pooled income fund under which all long-term capital gains are permanently set aside for charitable purposes.
4. This Release and Governing Documents shall be interpreted, and the DPIF shall be continued to be administered, in a manner consistent with this intention.

Executed on this _____ day of _____, 2005.

The Regents of the University of Michigan

By: _____

Timothy P. Slottow
Executive Vice President and
Chief Financial Officer

**AMENDMENT TO THE DECLARATION OF TRUST
OF THE UNIVERSITY OF MICHIGAN DONOR POOLED INCOME FUND**


The Declaration of Trust of the University of Michigan Donor Pooled Income Fund dated January 15, 1975, amended February 1, 1977, February 8, 1991, December 8, 1995 and May 14, 1998, is hereby further amended under the authority of Section 6.4 by replacing the current provisions of Section 3.1 as follows:

3.1 The determination dates shall be the first day of the taxable year of the Fund and the last day of each month in the taxable year. Where a determination date falls on a Saturday, Sunday or legal holiday (as defined in the Code and the regulations thereunder), the determination date shall be the next preceding day which is not a Saturday, Sunday or legal holiday.

This Amendment is executed and shall be effective on this _____ day of _____, 2005.

The Regents of the University of Michigan

Witness:

By: 
Timothy P. Slottow
Executive Vice President and
Chief Financial Officer

STATE OF MICHIGAN)
) SS
COUNTY OF WASHTENAW)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005 by Timothy P. Slottow, Executive Vice President and Chief Financial Officer of the Regents of the University of Michigan, a Michigan constitutional corporation, on behalf of the Regents.

NOTARY PUBLIC

_____ My Commission Expires: _____

Authorized by the Regents of the University of Michigan _____, 2005.

STATE OF MICHIGAN)
) SS
COUNTY OF WASHTENAW)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Timothy P. Slottow, Executive Vice President and Chief Financial Officer of the Regents of the University of Michigan, a Michigan constitutional corporation, on behalf of the Regents.

NOTARY PUBLIC

_____ My Commission Expires: _____

Authorized by the Regents of the University of Michigan _____, 2005.

For Reference, Current Language of the DPIF Declaration of Trust (As Previously Amended) Follows with Deleted Provisions Indicated by Strikethrough, and New Provisions Underlined:

~~3.1 – The determination dates shall be the first day of each month during each taxable year of the Fund. If a determination date falls on a nonbusiness day, the determination date shall be the next preceding business day. The term ‘business day’ shall mean any day that business is transacted on the New York Stock Exchange and on which banks in Michigan are authorized to engage in the banking business other than Saturday.~~

3.1 The determination dates shall be the first day of the taxable year of the Fund and the last day each month in the taxable year. Where a determination date falls on a Saturday, Sunday or legal holiday (as defined in the Code and the regulations thereunder), the determination date shall be the next preceding day which is not a Saturday, Sunday or legal holiday.