



JPMorgan Chase & Co.

Supporting Organization Roadmap

Advantages and Action Steps

June 2013



Supporting Organization Roadmap Memo

Proposal: Create a Type I supporting organization (SO) under NPT, which is a separate legal entity from the supported public 501(c)(3) organization (*i.e.*, subsidiary). The SO would be structured as a tax exempt corporation under Pennsylvania law with its own charters, bylaws, IRS exempt status, and tax filing (Form 990). The SO would provide the donor with the positive attributes of public and private charitable entities (otherwise unavailable through private foundations or public charity/DAF options), described below:

U.S. public charity attributes

- Maximizes tax deductibility
 - Funding of private convertible units into a private foundation would likely be treated as long-term capital gain property with a deduction subject to a 20% AGI limitation and limited to cost basis, which is \$0
 - Funding of units to a public charity (or supporting organization) would likely be subject to a 30% AGI limitation with a deduction at fair market value
- No limitation on types of property contributed
- Accommodates donations from private foundations
- Avoids private foundation constraints (5% annual payout, 2% excise tax, self dealing rules)
- Provides professional institutionalized framework for longevity and board succession

Supporting Organization (SO) structural attributes

- Allows for donor participation and influence for grants through donor-appointed minority board positions
 - Donor must relinquish all ownership and custody of the donated funds or property and the organization must be free to accept/ reject any suggestion or request made by a donor
 - Donor may designate advisors to recommend grants. SO may have committees regarding investments and distributions
- Unlike the public charity parent, SO does not have to meet public support test

SO investment attributes

- Tailored investment recommendations allowing donor to receive customized portfolio construction and to make asset allocation recommendations subject to UPMIFA state fiduciary statutes
- Possible for donor to have a SO board position and direct investments
- Investment performance of one donor's contributions is segregated from other pools, minimizing draw-downs and preserving grant-making ability
- Offers flexibility around types of assets (*e.g.*, concentrated stock and real estate)
- There is a more flexible diversification requirement (relative to private foundations):

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- should allow for concentration risk to be considered at public charitable fund level
 - should allow for illiquid assets to be maintained or liquidated over a longer timeline
 - Contributions of concentrated positions, if good investments, may be retained if the aggregate public charity asset allocation is prudently diversified
 - Regulatory private foundation framework regarding jeopardizing investments, excess business holdings, excise taxes, and distribution requirements do not apply to Type I supporting organizations

Offering

-  Morgan has a Donor Advised Fund (DAF) offering, namely the Charitable Giving Fund (CGF), through collaboration with National Philanthropic Trust (NPT). NPT serves as the sponsoring public charity for the donor advised fund accounts and is the third largest such DAF sponsor in the United States.  Morgan is currently about 40% of NPT's book of business.
 - NPT currently provides administrative support for contributions, grants, web access, & educational support
 - Responsible for sub-accounting and sending statements to JPM
 - Partners with Nonprofit and Charitable Account Administration (NCAA) and client service to resolve client inquiries

Public support test

- To qualify as a public charity, most organizations (with the exception of churches, schools, and hospitals) must pass a public support test¹ to ensure substantial donations from the public. This means that the charity must constantly make its case in fundraising
 - The formula for this test is that public support as a fraction of total support must generally be greater than or equal to one third ($\text{Public Support} / \text{Total Support} \geq 1/3$). This metric is calculated over a rolling 5-year period and must be continuously demonstrated on the Form 990 throughout the charity's existence.
 - Disproportionately large donations run the risk of "tipping" the charity out of its public charity status since "public support" includes 100% of government grants, 100% of grants from public charities, but only up to a 2% cut-off from each other source (companies, private foundations, individuals, etc.). This is because a larger number is being added to the "total support" number in the denominator without being proportionately balanced out in the "public support" numerator (due to the cut-off). The use of SOs avoids this problem since SO assets are excluded from this test.
- Rather than having to meet public support tests that otherwise generally require a public charity to receive at least 1/3rd of its annual support from broad based public donors, SOs instead receive beneficial tax treatment as public exempt organizations through their relationship with the supported public 501(c)(3). The SO's public exempt status thus allows the SO to avoid having to comply with private foundation rules, including 5% payout requirements or excise taxes, and maximizes the tax deductibility to donors for contributions in kind or cash

¹ (IRC §509(a)(1))



Governance and organizational structure

- The SO will have its own board of directors & makes its own decisions about investments, spending policies, and grantmaking
- SO board composition
 - A majority of the supporting organization's board must be appointed or elected by the sponsoring public organization. Members of the SO's board do not have to be actually comprised of the sponsoring public organization's board, but may be their designees, including officers of the public charity who are not board members. Population of the SO board may be done in consultation with donors.
 - Board may not be controlled by "disqualified persons" defined generally to include major contributors or contributor's families or entities controlled by contributors; disqualified persons may be minority directors or may appoint minority directors on the board
 - There should be an odd number of board members in the case of a tied vote
- SO board may delegate responsibility to SO subcommittees (e.g., regarding investment or grantmaking decisions). Subcommittees may confer with external advisors and make recommendations back to SO board. SOs may also delegate investment contracts, administrative contracts, security safe-keeping contracts, etc. and typically fee at commercially reasonable arms-length rates so that there are reference points in the open market
 - Delegated investment management - charity would most likely define investment guidelines, defining their objectives and [REDACTED]. Morgan would implement a strategic asset allocation to meet them; tight/disciplined management, including tactical changes to take advantage of timely market opportunities made by JPM investment manager in accordance with IPS
- In terms of interaction of the SO board with the non-SO aspects of the public charity, the 501(c)(3) parent may delegate to or accept recommendations from SO subcommittees with regard to investments and grantmaking
- The SO can have its own separate corporate identity for public purposes including logo, letterhead, etc. and its own identity for operational purposes, including separate books & records, or remain anonymous

Grantmaking

- The SO board distribution committee may authorize distributions to any qualified charity. May also consider choice of recipients recommended by an advisory committee; Donors may have ideas presented to distribution committee through advisory committee
- Board may make grants and take other governance actions without requirement of discrete approvals from supported public §501(c)(3)
- SO should not funnel its grants back through the public charity so as to not tip structure into losing status as public charity
 - e.g., if want to give to cause A, have public charity send request to SO to send grant on its behalf to grantee such that it doesn't pass through the public charity, but rather the request coming down from the board of the supported org. (SO needs to further the exempt purpose of the supported organization)



Strategy and Implementation

- Filings for new SO may take up to a year
- IRS not readily issuing new determination letters for “shelved” SOs, although NPT has a grandfathered SO on the shelf, which would expedite the set-up process (i.e., approximately 2 months)
- Simpson Thacher has a SO registration/template that could provide further expediency

Regulatory constraints

- *Private inurement/benefit*- The private inurement rule and private benefit rules exist to ensure that charitable assets are preserved for the benefit of the public and not diverted to private use
 - Charities are not allowed to give direct or indirect benefits to officers, directors, founders, and other people that are closely related to the charity
 - Precludes individuals who have close relationships with and the ability to exercise control over a charity from directly or indirectly benefiting unfairly or unreasonably from that charity's income or assets
- *UBTI*- Unrelated Business Taxable Income is generated by an activity that constitutes a trade or business that is not substantially related to the charity's exempt purposes, or by debt-financed investments (UBTI on charities formed as a corporation is subject to corporate income tax rates whereas UBTI on charities in trust form is subject to trust income tax rates)
- *Spending requirements*- While there is no fixed percentage of income that an organization must pay out for charitable purposes, a charity must make charitable distributions over time that are commensurate with its financial resources and capabilities (non-profits may generally not accumulate wealth for too long)
- *Prudence standards*- Public charities may be subject to UPIA, UMIFA, or UPMIFA, all of which have prudent investing standards where those responsible for managing and investing the funds of an institution have a responsibility to act in good faith with the care an ordinarily prudent person in like circumstances would take

NPT notes

- Asset
 - NPT would like a copy of a K-1 to determine if there is UBTI generated by the units (if so, not problematic, but would like to be aware of)
 - NPT needs controlling legal agreements concerning the contributed units to accomplish its requisite due diligence in accepting the contribution for which they will execute a confidentiality agreement
- Grants
 - Last year NPT approved 99.7% of grant requests
- Board
 - Independent board members would be comprised of current and former members of NPT's board, as well as possibly NPT officers

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- Can share bios, set up conference call or in-person meeting with potential board members before donation
 - Board frequency driven by donor, usually 3X/year
 - Board members can be compensated for costs, but industry standard is no compensation
 - NPT expressed reluctance to have a related party investment manager get paid; technically possible in the law if meets exception for third party-arms length reasonable compensation for services that further the exempt organization's purpose
 - Investments
 - NPT allows latitude in alternatives space; mindful of things like capital calls and UBTI (may require donor to hold NPT harmless in case of capital calls)
 - NPT invests in private equity right now
 - Costs
 - NPT draft management agreement attached for donor's review with Schedule A for regular flat fee and services provided within, and Schedule B for a la carte services like website design, staffing needs, insurance, etc.
 - Estimated \$200K annual cost; would be prorated for part of fiscal year, but no "most-favored nation" status
 - Floor fee is \$175K per annum, but also need insurance, auditor, state registration, (i.e., \$25K)
 - Donor preference as to how to take fee(s) (e.g., quarterly)
 - Due diligence on asset will be an additional cost; may net out of gift proceeds
 - SO doesn't have audited financial statements, but rather that's done at the public charity level; can do for SO for additional fee

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made this _____ day of November 2010, ("Effective Date") by and between National Philanthropic Trust ("NPT"), a Pennsylvania nonprofit corporation, and <<Insert SO NAME HERE>>(the "Fund"), a Pennsylvania nonprofit corporation. NPT and the Fund are each a "Party" and together, the "Parties."

RECITALS:

WHEREAS, NPT is recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and as a public charity under Section 509(a)(1) of the Code.

WHEREAS, The Fund is recognized as exempt from federal income tax under Section 501(c)(3) of the Code, and as a supporting organization to NPT under Section 509(a)(1) of the Code.

WHEREAS, The Fund desires to engage NPT to provide certain management services for the Fund, the goal being to have NPT manage the day to day clerical, administrative and accounting responsibilities of the Fund.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and intending to be legally bound, the parties agree as follows:

1. **Term.** The Fund hereby engages NPT to provide management services to the Fund, and NPT accepts such engagement, for a term of two (2) years ("Term") beginning on the Effective Date and subject to Automatic Renewal (see Section 2), Early Termination (see Section 6) and all other terms and conditions set forth in this Agreement.
2. **Automatic Renewal.** Upon the expiration of the initial Term, this Agreement will automatically renew for successive one year periods unless Fund notifies NPT in writing, no later than one hundred twenty (120) days before the expiration of the Term, of its intent not to renew this Agreement. If the Agreement automatically renews for one or more periods, all references to Term in this Agreement shall include the renewal periods (if any).
3. **NPT Services.** During the Term, in exchange for the Annual Fee set forth in Section 4, NPT shall provide the Fund with various services including, but not limited to, board management functions and those services itemized on **Schedule A** annexed hereto and incorporated herein by reference.

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4. **NPT's Annual Fee.** In exchange for NPT providing the services enumerated in Section 3 during the Term, the Fund will pay NPT compensation (the "Annual Fee") of \$175,000. At the end of each month, 1/12th of the Annual Fee will be advanced to NPT. The Annual Fee is earned proportionately over a 12 month period.

5. **Additional Costs and Fees of Fund.** In addition to the Annual Fee set forth in Section 4, the Fund will be responsible for all disbursements reasonably and actually incurred (or to be incurred) by NPT on behalf of the Fund which are reasonably necessary to carry out the purposes of this Agreement and are not otherwise covered by NPT and listed on Schedule A. Examples of such additional costs to be borne by the Fund are set forth on Schedule B, annexed hereto and incorporated herein by reference. NPT shall present the Fund with an invoice on the last day of each month including each of its out of pocket expenditures with receipts enclosed. The Fund shall reimburse NPT within 30 business days thereafter.

6. **Termination.** This Agreement may be terminated by either Party for any reason upon ninety (90) days prior written notice to the other Party. Each Party will continue to be obligated to the other Party as provided in this Agreement through the termination date. The obligations under Section 4 (NPT's Annual Fee), Section 7 (Confidentiality), Section 8 (Intellectual Property) and Section 12 (Works for Hire) will survive termination except that Section 4 survives only if NPT continues to provide services after the expiration of this agreement.

7. **Confidential Information.** As a result of the Parties' relationship with one another, the Parties will be acquiring and making use of confidential information about each other's charitable activities, including without limitation, information regarding the Fund's grant making plans, rejected grant requests, research, and personal information about the Fund's directors, officers, employees and volunteers (collectively, "Confidential Information"). During the Term of the Agreement, and for a period of five (5) years thereafter, the Parties agree to hold any and all such Confidential Information in strict confidence and not disclose Confidential Information to any third-party unless such disclosure is (i) necessary to carry out this Agreement and consented to in writing by the other party, (ii) compelled by court order or (iii) or required in order to comply with federal or state law (e.g., IRS Form 990). Upon termination of this Agreement, NPT agrees to return immediately to the Fund originals and copies of all documents, plans, proposals or marketing information provided to NPT by the Fund or its directors or developed for the Fund by NPT during the Term of this Agreement.

8. **Intellectual Property.** This Agreement does not convey, transfer or assign to NPT or any other party any ownership rights in, or any right to use, the Fund's intellectual property including, but not limited to, its licenses, trademarks, copyrights and patent rights, publicity rights, moral rights, logos, service marks and/or trade names (the "Fund's Intellectual Property"), except as specifically agreed to by the Fund, in writing.

9. **Notices.** All notices, demands or requests which are required or desired to be given shall be in writing and shall be either delivered by hand or sent by regular or certified mail, return receipt requested, addressed as to:

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If to NPT: Eileen R. Heisman, President
National Philanthropic Trust
165 Township Line Road, Suite 150
Jenkintown, PA 19046
Tel: 215.277.3020

If to the Fund:

10. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Pennsylvania, without giving effect to the principles of conflicts of laws thereof.
11. **Compliance.** The Parties agree that they will comply with all federal, state and local laws that may cover the activities contemplated by this Agreement.
12. **Works for Hire.** All right, title and interest (including, without limitation, copyrights and patents, and all extensions and renewals thereof) throughout the world in perpetuity in the results and proceeds of NPT's services hereunder and all materials produced or created by NPT or its subcontractors pursuant to this Agreement, including, without limitation, any design or copy but excluding third party content, if any, (the "Materials") shall automatically and irrevocably upon their creation be and remain the sole and exclusive property of the Fund as works made for hire under United States copyright law. Without limiting the foregoing, NPT hereby assigns to the Fund all right, title and interest (including but not limited to copyrights and all extensions and renewals thereof), in and to the Materials. At the Fund's request, NPT shall promptly execute, acknowledge, and deliver to the Fund any and all copyright or other intellectual property registration applications, instruments of transfer and other documentation necessary to evidence, convey, establish, maintain, or defend the Fund's rights in such results and proceeds and to fully carry out the intention and purpose of this paragraph. If NPT fails or refuses to so execute any such documents or assignments within five (5) days of the Fund's written request therefore, NPT hereby irrevocably appoints the Fund as its attorney-in-fact (such appointment being coupled with an interest) to execute the same on the Fund's behalf. NPT shall also cause all parties rendering services to it or on its behalf in connection with the Fund to execute a work-for-hire/assignment agreement in a form approved by the Fund.
13. **No Authority to Bind.** This Agreement does not create a partnership between the Parties and NPT agrees that nothing contained herein shall give NPT permission to bind the Fund to any agreement or other type of obligation other than what is specifically set forth on **Schedule A** of this Agreement.

14. **Survival.** If any provision of this Agreement shall be held to be invalid or unenforceable in any respect, the enforceability of the remaining provisions shall be unaffected thereby.

15. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and all prior negotiations and agreements are hereby merged into this Agreement.

16. **Modification/Waiver.** This Agreement may only be modified or amended by a writing signed by the Parties. No provision of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing and signed by the Party to be charged. The covenants and agreements contained herein shall bind and inure to the benefit of the Parties and their respective successors and assigns, and may not be transferred or assigned without the written consent of the other Party.

17. **Costs for Breach.** In the event of nonpayment or any other breach of this Agreement by either Party, the breaching party shall pay to the non-breaching Party the costs and expenses of enforcing this Agreement including, but not limited to, reasonable attorneys' fees, in addition to any damages or monies otherwise due to the non-breaching party.

18. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled in accordance with the Rules of the American Arbitration Association or similar arbitration body in the City of Philadelphia and Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding anything to the contrary herein, either Party may challenge the validity of any termination under the procedure for arbitration of disputes as set forth in this paragraph 18, and in any such arbitration the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

National Philanthropic Trust

By:

By:

Eileen R. Heisman, President

SCHEDULE A

NPT SERVICES

NPT agrees to provide the following minimum services to the Fund. This list should be construed as a menu of available services provided to the Fund, rather than as a division-of-labor between NPT and the Fund:

I. Governance

- a. Ensure that charitable best practices and common standards are maintained, including appropriate policy recommendations.
- b. Conduct regular Board meetings, which include at least one in-person meeting per fiscal year.
- c. Prepare and maintain Board meeting agendas, books and minutes.
- d. Serve as liaison to and provide interim communication with Board members.
- e. Maintain annual organizational and program oversight and review.

II. Corporate Administration

- a. Negotiate appropriate insurance coverage.
- b. Maintain corporate documents and records.

III. Grant Administration

- a. Application processing: review grant applications, ensure application completeness, perform grantee due diligence including documentation of tax status, and prepare grant dockets for Board review and approval.
- b. Grant processing: award or denial notification, grant agreement drafting, ongoing periodic communications as necessary, grant close out.

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- c. Grantee management: review and monitor financial and narrative reports.
- d. Develop a standard grant agreement consistent with the Fund's grantmaking.
- e. Ensure timely disbursements of grant payments.
- f. Prepare and present honoraria consistent with the charitable mission of the Fund and a written honorarium policy, limited to \$XXX per engagement.

IV. Back Office Support

- a. Provide exceptional customer service and personalized attention.
- b. Maintain unique database for the Fund, including relevant contacts, vendors, grantees and other interested groups.
- c. Provide online access of grant and grantee information to Board designees.
- d. Provide general office support and related expenses.

V. Contribution Processing

- a. Process periodic additional contributions of cash or securities.
- b. Accept contributions of illiquid assets
- c. Prepare gift/contribution receipts.

VI. Finance/Treasury Function

- a. Maintain the Fund's financial records under a sound structure of internal controls.
- b. Perform related accounting services for the Fund.
- c. Ensure payment of accounts payable and other liabilities.

- d. Provide oversight of cash management.
- e. Manage transfer and liquidation of Fund assets.
- f. Prepare documents for annual consolidated audit by independent CPA firm.
- g. Oversee the preparation and filing of all required returns for federal, state and other regulatory bodies with jurisdiction over the Fund including IRS Form 990 and state registrations.
- h. Prepare and distribute quarterly financial statements.

VII. Investment Policy and Performance Review

In collaboration with professional advisors(s) (see Schedule B below):

- a. Recommend an Investment Policy.
- b. Establish investment objectives.
- c. Understand performance expectations.
- d. Conduct quarterly reviews against benchmarks, monitor investment results and ensure compliance with Investment Policy.

SCHEDULE B

ADDITIONAL SERVICES

The following services provided to the Fund by NPT are not covered by the Annual Fee and accordingly are the responsibility of the Fund:

I. Recurring Annual Costs

NPT shall have the right to incur the following cost/services on behalf of the Fund without prior permission of the Fund, provided the costs incurred are arms-length, commercially reasonable and necessary and helpful for NPT to carry out its duties under the Agreement:

- a. Costs associated with any independent investment management and consulting.
- b. Accounting fees for independent CPA to prepare consolidated annual audit and federal tax filings.
- c. Fees associated with preparation and filing of state registrations.
- d. Travel expenses for Board members and NPT staff, including to Board meetings, conferences and grantee site visits.
- e. Insurance premiums.
- f. Legal expenses associated with vendor contract negotiation and document preparation.
- g. Legal expenses associated with revisions to or creation of additional grant agreements.
- h. Dues and subscriptions to professional organizations requested by the Board.
- i. Website hosting and maintenance.
- j. Due diligence for prospective international grant recipients in compliance with the Patriot Act.
- k. Costs associated with holding non-traditional investment options.

II. Exceptional Periodic Costs

NPT shall not incur the following costs/services without the Fund's advance approval:

- a. Fees and costs associated with professional advisors engaged in grant related activity, including site visits.
- b. Fees and costs associated with professional advisors engaged in gift related activity, including liquidation of restricted stock or unusual assets.
- c. Additional staff, contract personnel or consultants with related costs as may be required.
- d. Fee for oversight and management of contract personnel or consultants.
- e. Public relations and marketing activities, including award ceremonies, stationary brochures, website design, annual reports, etc.