



CODE OF ETHICS AND CONDUCT

Manufacturing Enterprise Solutions Association International, Inc., (“MESA” or “corporation”) has adopted the following Code of Ethics and Conduct for MESA, (the “Code”) for anyone associated with MESA (hereinafter the “MESA Affiliates”).

I. Introduction

MESA is a Pennsylvania nonprofit corporation, and is exempt from federal taxation under Section 501 (c) (6) of the Internal Revenue Code of 1986 as amended. A Section 501(c) (6) organization is also referred to as a “business league”. In order to maintain its exemption as a business league, MESA must: be an association of persons having a common business interest; be organized to promote that common business interest and not the interest of singular members; not be organized for profit nor can it, except incidentally, conduct business that would normally be conducted in a for-profit manner; direct its activities to the improvement of business conditions of one or more lines of business, (as opposed to providing particular services to individuals); and must operate similar to a chamber of commerce or a board of trade. In other words, an exempt business league cannot be conducted so as to give a competitive edge to an individual or to a narrowly defined segment of the business world.

Manufacturing Enterprise Solutions Association (MESA) International is a worldwide not-for-profit community of manufacturing companies, information technology hardware and software suppliers, system integrators, consulting service providers, analysts, editors, academics and students. The combined purpose is to improve business results and production operations through optimized application and implementation of information technology and best management practices

MESA is committed to conducting its business in compliance with the law and the highest ethical standards. This Code summarizes the standards that must guide the actions of the MESA Affiliates and mechanisms to ensure compliance. This Code also outlines the fiduciary duties of MESA’s board of directors and officers as a guiding force behind the overall Code of Ethics and Conduct.

This Code does not cover every issue that may arise, or every situation in which ethical decisions must be made, but rather sets forth key guiding principles of business conduct expected of MESA Affiliates. This Code should be read in conjunction with MESA's other corporate policies and procedures, including its Conflict of Interest Policy and Procedures and its Confidentiality Policy.

II. Compliance with laws, rules and regulations.

MESA is strongly committed to conducting its business affairs with honesty, integrity and in full compliance with all applicable laws, rules, and regulations. No MESA Affiliate may commit an illegal or unethical act, or instruct or authorize others to do so, for any reason, in connection with any act, decision or activity that is or may appear to be related to his or her relationship or position with MESA.

III. Compliance with Anti-Trust Laws

MESA is a membership, tax-exempt organization and many of its members compete with one another. Yet, even as an exempt organization, MESA is subject to U.S. antitrust laws, including the Sherman Act (15 U.S.C.A. § 3) and the Clayton Act (15 U.S.C.A. § 12). The MESA Affiliates will not act to create agreements, decisions, collusion or practices that restrict or inhibit fair competition. The MESA Affiliates will not act to otherwise violate federal antitrust laws.

Strict compliance with antitrust law is the policy of MESA. The MESA Affiliates must exercise extreme care to avoid violations of antitrust law as well as any activity that may raise even a suspicion of possible violation. To this end, the board of directors and officers of MESA shall have access to independent legal advice to assist on questions of antitrust law.

The MESA Affiliates, working on the board of directors, in groups, committees or other similar bodies should follow these mandates to avoid violating antitrust laws:

- A. Participation must be voluntary and failure to participate shall not be used to penalize any member or business.
- B. Meetings shall be governed by an agenda prepared in advance, and recorded by minutes prepared promptly after the meeting.
- C. As participants, MESA Affiliates should not discuss or share non-public information on any of the following commercially sensitive matters.

1. Individual prices, rates, promotions, coverages, discounts, rebates and reductions;
 2. Costs;
 3. Profits and profit margins;
 4. Output and sales;
 5. Market shares and sales territories;
 6. Investment plans;
 7. Claims settlement practices;
 8. Advertising, marketing or promotion plans;
 9. Bidding or refraining from bidding;
 10. Credit conditions or any other terms of sale;
 11. Selection, rejection or termination of customers or suppliers, or
 12. Other competitive aspects of an individual company's operation.
- D. All data collection exercises should be approved by legal counsel and in general, data should only be collected if it can be made aggregate and anonymous and does not refer to future (and especially nonpublic) plans, prices, costs or output.
- E. Any recommendations from the board of directors, committee or working groups are not binding. Individual MESA Affiliates remain free to make independent, competitive decisions.
- F. Any standards endorsed must be voluntary standards and any business practice recommendations must also be voluntary.
- G. If any MESA Affiliate believes that a discussion or activity may present a violation of antitrust law, that person should speak up immediately. If the activity persists, the Chairman of the board of directors should be notified, who may suspend the activity until legal counsel, if necessary, is consulted.

IV. Fiduciary duties of corporate directors and officers

Directors and officers of a nonprofit corporation owe certain fiduciary duties. The principal fiduciary duties are the duty of loyalty, the duty of care, and the duty of obedience. The duty of loyalty means that a director should act in the best interests of the nonprofit corporation and not in his or her personal interests. The duty of care demands that in relation to the nonprofit corporation, a director should act with the care of a normally prudent person in like circumstances and participate in governance in good faith. The duty to obey means to know, understand and adhere to applicable laws and governance requirements.

In order to be protected from personal liability, directors of a nonprofit corporation must adhere to the nonprofit corporate duties outlined above.

Although, under the law, the duties of loyalty, care and obedience apply only to directors and officers, MESA, by this Code of Ethics and Conduct, applies such duties to all MESA Affiliates, except where this policy names only “directors and officers.”

A. Duty of loyalty

The duty of loyalty precludes MESA Affiliates from using the funds and property of the corporation or the influence and advantages of their position as a MESA Affiliate for anything but the common good of the corporation.

Violations of the duty of loyalty typically involve either a conflict of interest, confidential information, or both.

1. Conflicts of interest

The duty of loyalty requires MESA Affiliates to avoid conflicts of interest.

A conflict may exist due to the personal interests of the MESA Affiliate, the interests of a close family member, or the interests of another entity of which the MESA Affiliate or a close family member is a director, officer, employee, agent, or significant shareholder.

In the case of a conflict of interest, the appropriate remedial action will vary depending upon the circumstances.

Often a conflict can be addressed by full disclosure and recusal from voting and/or participating in the debate on the potential conflict issue. Such recusal should be reflected in the minutes.

However, stronger action, including removal of the offending party, may be required if the conflict is pervasive and continuing and effectively precludes the MESA Affiliate from adequately discharging his or her responsibilities.

More detail can be found in the MESA [Conflict of Interest Policy and Procedures](#).

2. Examples of conflicts of interest

Examples of situations in which the duty of loyalty potentially may be implicated include:

- **Usurpation of corporate opportunity.** MESA Affiliates may not divert a corporate opportunity for their personal gain.

For example, MESA may be pursuing a potential new contract with an educational company to produce an electronic newsletter for its members. A MESA Affiliate who has an ownership interest in or other relationship with a business competitor of MESA should not attempt to inform such competitor, or any other competitor, of MESA's activities in pursuit of this new contract.

The duty of loyalty does not preclude a MESA Affiliate from competing with the corporation if there has been full disclosure and the corporation has decided by a vote of a majority of uninvolved fiduciaries (directors) to decline the opportunity.

- **Business dealings with corporation.** Business dealings between MESA Affiliates and the corporation are potentially problematic. Examples include selling property, products, or services to the corporation or purchasing property, products, or services from the corporation.

These dealings are not absolutely prohibited. However, to ensure that the transaction is on fair terms: (a) there should be full disclosure, (b) the involved MESA Affiliates should recuse themselves, and (c) the transaction should be approved by a majority of uninvolved MESA Affiliates.

3. Other potential conflict issues

Some other situations in which MESA Affiliates may need to address a potential conflict include:

- **Involvement in leadership of other organizations.** A MESA Affiliate's involvement in the leadership of another organization often is beneficial to a corporation, as the MESA Affiliate gains important expertise and establishes relationships from this other role.

For example, a MESA Affiliate who is actively involved in the leadership of a manufacturing company brings important insight to the table.

MESA Affiliates may have leadership roles in other organizations, even one whose policies are not totally in sync with those of MESA, as long as the overall goals and objectives of the two organizations do not conflict.

However, there may be specific situations in which recusal from a specific issue is required due to a conflict related to the MESA Affiliate's involvement in the leadership of another organization, e.g., a business transaction between the two organizations.

- **Representation of other constituencies.** Certain MESA Affiliates may be elected from specific constituencies.

During the discussion of a matter, it is vital that MESA Affiliates voice the concerns of their respective constituencies, as this helps ensure that the board is informed when it decides on a course of action.

However, when MESA Affiliates cast their vote, they must act in the *interest of MESA as a nonprofit corporation* rather than their individual constituencies.

- Activities in violation of antitrust laws always represent a conflict of interest.

4. Conflict of interest policy/disclosure statements

MESA has a Conflict of Interest Policy and Procedures, which provides further information regarding potentially problematic conflicts of interest and direction and guidance on how MESA Affiliates should address these situations.

MESA Affiliates are required to submit an annual disclosure statement to MESA's Board and update it with material changes to help identify potential conflicts and ensure that appropriate action is taken to avoid violation of the duty of loyalty. A copy of the disclosure statement appears as part of the MESA Conflict of Interest Policy and Procedures

5. Confidential and proprietary information

The duty of loyalty also requires MESA Affiliates to refrain from disclosing confidential corporate information, *i.e.*, information that is explicitly identified as confidential or which reasonably should be treated as confidential due to its nature or subject matter.

Examples of protected information include attorney-client communications, confidential reports considered in executive session, and non-public financial information and strategic plans. More information can be found in the MESA Copyright/Confidentiality Policy.

The obligation extends to the confidential information of any subsidiary corporation(s).

B. Duty of obedience

The duty of obedience is related to the duty of loyalty. It requires directors and officers to act in accordance with the organization's articles of incorporation, bylaws and other governing documents, as well as all applicable laws and regulations.

C. Duty of care

The duty of care requires that directors and officers act in good faith, in a manner that they reasonably believe to be in the best interests of the corporation, and with due care when they discharge their responsibilities.

Due care requires that directors and officers use the care, including reasonable inquiry, skill and diligence, that a person of ordinary prudence would use under similar circumstances.

A key component of the duty of care is to be informed. Directors and officers are required to exercise reasonable diligence in gathering and considering material information prior to making a decision.

This generally can be satisfied by, among other actions, attending board meetings and other meetings as required and applicable, consulting experts as needed, and carefully reviewing the financial information and other material submitted to the board.

1. Management oversight

While a corporation is managed under the direction of the board of directors, the direct hands-on management of a nonprofit corporation generally is delegated to professional managers who report to the board.

Although directors are not expected to micro-manage the day-to-day activities of the corporation, they must pay careful attention to: (a) selecting competent senior management; (b) establishing institutional norms and procedures; (c) reviewing and having input into management-formulated strategies; and (d) monitoring the performance of senior management.

2. Reliance on information and experts

Directors and officers generally may rely upon information or opinions in reports from the corporation's officers or employees, legal counsel, public accountants, other outside experts, or a committee of the board.

However, directors and officers must act in good faith in relying upon the report and their reliance must be reasonable and not blind. They must have a reasonable basis to believe that the source of the report is competent and trustworthy, and there

must be no indication that would suggest to an ordinary, prudent person that the report should not be given weight.

3. Management of investments

The duty of care includes, and in fact mandates, that the board of directors and officers protect the assets of the corporation. This includes the general management and investment of all of the corporation's funds.

Directors and officers are not expected to be experts in the stock market or other investment mechanisms. Retention of and reliance on an investment advisor with *good credentials and reputation* is an effective protection, even if the advice given ultimately is flawed.

Directors and officers are not insurers of the adequate performance of a corporation's funds in an investment vehicle, but investment decisions must be reasonable and defensible.

In the vast majority of cases in which directors and officers have incurred liability related to underperforming investments, it was because the directors and officers delegated the investment responsibility and then failed to oversee or supervise the delegee.

D. Business judgment rule

While the board of directors and officers must act consistent with their fiduciary duties of loyalty, care, and obedience, they are not required to guarantee the correctness of a decision. The business judgment rule applies to the board of directors and officers and presumes that the business decisions of the board of directors and officers are made in the best interests of the corporation.

The business judgment rule does not protect the board of directors' or officers' inaction, but does protect a conscious decision not to take action. The board must make a decision to act or refrain from acting.

To utilize the business judgment rule, three elements must be present:

- A majority of the board approving the action must have no financial interest in the decision, *i.e.*, there must be no self-dealing.
- The board must make its decision with due care. It must carefully consider the issues and all reasonably available material information.

- The decision must be made in the good faith belief that it is appropriate and in the best interests of the corporation.

In essence, the business judgment rule protects the corporation's board and officers from mistakes of judgment, and keeps them from acting as insurers of their actions. As a result, the board and officers can be comfortable in taking calculated business risks.

E. Practical guidelines

The following are practical guidelines for board and officer fiduciary duties:

1. **Attend meetings.** Meetings are the principal vehicle for the board and officers of MESA to obtain information and discharge their duties.
2. **Be proactive.** The board of directors and officers should ask questions about important matters, even if the matters are not on the meeting agenda.
3. **Avoid haste.** Major decisions should be made only after there has been a full opportunity to examine all material information and each board member or officer has had enough time to present his or her views and to ask questions.
4. **Be prepared.** The board of directors and officers should review the available material information before attending a meeting and before making a decision. Prior to approving contracts and other documents, the board of directors and officers should review all their material terms.
5. **Ask questions.** The board of directors and officers should not merely accept information presented to them, but instead should ask questions about it, test it, judge its reliability, and understand it fully.
6. **Seek advice of experts** when appropriate.
7. **Voice dissent.** A board member or an officer who disagrees with a decision should vote against the decision and insist on including a dissent on an issue of importance in the minutes.
8. **Avoid conflicts of interest.** Consult legal counsel about potential conflicts. Be sure to keep your disclosure statement up to date.
9. **Protect confidential information.** Do not disclose information and materials which are identified as confidential or which if disclosed could result in competitive harm to MESA or its subsidiaries.

10. **Document the process.** Board and committee meeting minutes should reflect the deliberative process of the board of directors, officers and other MESA Affiliates.

As applicable, these practical guidelines may also be applied to the activities of other MESA Affiliates.

V. Ethics

MESA exists to bring a level of knowledge and understanding to all of its MESA Affiliates and to the manufacturing execution industry, including solution providers, manufacturers and producers. MESA recognizes the valuable contribution made by companies offering educational facilities and resources for these important initiatives.

At the same time, MESA must guarantee a set of behaviors and ethical standards for MESA Affiliates, facility suppliers, delegates and instructors. Potential customers as well as potential competitors may attend an education event in the facility provider's premises and MESA wishes to make clear by the publication of this policy that all parties are required to behave in a professional and respectful way. Among other things, adherence to this policy as well as to MESA's Conflict of Interest Policy and Procedures and its

Confidentiality/Copyright Policy is expected. Such ethical and courteous behavior will show support for important MESA initiatives and will show appreciation to all parties for supporting cross industry educational efforts.

VI. Compliance and reporting

MESA Affiliates are expected to comply with all of the provisions of this Code as applicable and as described above. The Code will be strictly enforced and violations will be dealt with immediately, including subjecting MESA Affiliates to corrective and/or disciplinary action such as dismissal or removal from office.

Situations that may involve a violation of ethics, laws, or this Code will not always be clear and may require difficult judgment. MESA Affiliates who have concerns or questions about violations of laws, rules or regulations, or this Code should report them to the chairman of the board. The chairman of the board will have primary authority and responsibility for the enforcement of this Code.

MESA encourages all MESA Affiliates to report promptly any suspected violation of this Code to the chairman. If a suspected violation involves the chairman, or the chairman fails to address the situation, the reporting person shall inform another officer of the board of directors or the chair of any committee of the board that shall be developed (such as an audit committee) to address such situations.

MESA will not tolerate retaliation for reports or complaints made in good faith regarding suspected violations of this Code. Open communication of issues and concerns without fear of retribution or retaliation is vital to the successful implementation of this Code. MESA will take such disciplinary or preventive action as it deems appropriate or necessary to address any violations of this Code that are brought to its attention.

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