

3D Division Financial Advisory Committee
Master Operating Manual (MOM)
October 2020

Revised October 16, 2020

1. **General.** This Operating Manual describes the background, governance, committee member qualifications, appointments and terms of office, and the purposes of PSA’s 3D Division Financial Advisory Committee (3DD FAC).
2. **Background.** Proper oversight is required for the use of funds provided through the Erskine Trust to the “Stereo Division of the Photographic Society of America, Inc. – now the 3D Division - to be used for its general purposes.” Since the Stereo Division (3D Division) is not a legal entity separate from the Photographic Society of America, Inc. (PSA), PSA is the proper beneficiary and agrees to comply with the grantor’s wishes in using the Erskine 3D Bequest Fund by the 3D Division for “its general purposes” as identified in the Trust document. The authority to manage the funds resides with the PSA Board of Directors (Board). Given that the Executive Committee of the Board has responsibility for the day-to-day conduct of PSA’s operations including oversight of all financial funds the PSA Executive Committee will administer the funds. The 3DD FAC will advise the PSA Executive Committee regarding the use of these funds. The 3DD FAC will report to the PSA Treasurer.
3. **Statement of Purposes.** The purpose of the 3DD FAC is to support the function of the 3D Division within the Mission and Bylaws of PSA, this MOM, and within all legal and tax requirements in its use of the Erskine 3D Bequest Fund. The 3DD FAC will ensure the 3D Division officers have full and unrestricted information about the Erskine 3D Bequest Fund, currently managed by Merrill Lynch following the investment objectives and policies established by the PSA Investment Committee (<https://psa-photo.org/index.php?psa-policies>). The 3D FAC will review requests for expenditures to ensure they are supporting and enhancing the 3D Division for potentially all PSA members and in line with the Mission Statement of PSA. Expenditures for individual inurement, for an illegal or harmful tax act, or that are clearly wasteful will not be approved.
4. **Governance.** PSA is governed by a Board of Directors (BOD). With the approval of the BOD, management of the Society’s operations and the administration of its affairs shall be vested in an Executive Committee, which includes the oversight of funds of PSA, including the Erskine 3D Bequest Fund. The President of PSA appoints members to the 3DD FAC Committee. The 3DD FAC reports to the PSA Treasurer.
5. **Committee Composition.** The 3DD FAC should have representation from the following:
 - A. Chair of the 3D Division
 - B. Another officer or director from the 3D Division
 - C. Divisions Vice President
 - D. Member from the PSA Investments Committee
 - E. PSA member with accounting, legal or tax expertise
 - F. PSA member familiar with the 3D Division and Divisions
 - G. PSA Treasurer, ex officio non-voting member. However, in the event of a tie vote, the PSA Treasurer will vote to break the tie.

**3D Division Financial Advisory Committee
Master Operating Manual (MOM)
September 2020**

Committee members in the PSA positions of 3D Division Chair, Divisions Vice President and PSA Treasurer will rotate in and out of the Committee in accordance with their time in their positions. The PSA President will name the four appointed members of the 3DD FAC and will designate one member of the 3DD FAC to act as Chair. All members of the 3DD FAC are approved by the PSA Executive Committee. The PSA Treasurer is responsible for the oversight of the 3DD FAC for the PSA Executive

6. **Committee Membership Terms.** The 3DD FAC has a membership, consisting of six (6) members including the member with accounting, legal and/or tax expertise. If a member resigns or is unable to continue or is removed by the PSA President, the PSA President appoints a person to fill the unexpired term. A member's term shall be for a period of two (2) years unless otherwise indicated by the President. There is no limit on the number of terms a given member may be asked to serve except that, should the member cease to occupy a named 3D Division Chair's or Divisions Vice Presidents' position (named position), that member shall be replaced by their successor in the position. Said member may subsequently be appointed to serve in a position on the Committee at the discretion of the PSA President for a term designated by the PSA President. Terms for members not in a named position will serve staggered terms.
7. **Budget.** It is not anticipated the 3DD FAC will have any expenses. However, if expenses are necessary, they will be part of the 3D Division budget.
8. **Procedures.** Any request for expenditures from the Erskine 3D Bequest Fund must be submitted to the 3DD FAC. If the Committee approves the use of funds, a written communication will be sent to the PSA Treasurer, who will in turn put forth a motion for the approval of the funds to the PSA Executive Committee. The approval of a request will be determined by a majority vote of the 3D FAC. If the 3DD FAC disapproves the use of Erskine 3D Bequest Fund, the 3D Division will be notified by the PSA Treasurer who will also report the results to the PSA Executive Committee. Note, ongoing operating expenditures of the Division approved as part of the annual budget process are separate from this procedure.
9. **Review of Funding Requirements.** Each fiscal year the 3DD Treasurer shall present to the 3D FAC a report on the Division's anticipated need for funds through the end of the next 18 months along with the anticipated timing of the need for such funds. After discussion and agreement on the funding level, the 3D FAC will convey the information to the PSA Investment Committee with the request that the Investments Committee take

**3D Division Financial Advisory Committee
Master Operating Manual (MOM)
September 2020**

such action as may be needed to ensure that the required funds will be available in the 3DD Fund liquidity account when needed and that any liquidity in excess of the target amount be transferred to the 3DD Fund Long-term Investment Account managed by Merrill Lynch. The 3DD Treasurer will immediately alert the 3D FAC of any significant change in the anticipated funding needs over the course of the calendar year.

It is noted that the funds in the 3DD Long-term Investment Account are available if needed. However, it is acknowledged that unforeseen draw requests from this source may see the liquidation of invested positions during adverse market conditions. It is further noted that the 3DD Long-term investment account is structured to remit income from the invested positions to the 3DD Liquidity Account over the course of the year and that such funds will accumulate in the Liquidity Account until the annual review by the PSA Investment Committee. Anticipated income will be one of the factors the PSA Investment Committee will take into consideration when determining the amount needed in the 3DD Liquidity account after receiving the 3D FAC approved funding request.

10. The appendices included in this MOM cover A. the relevant section of the Trust Agreement, B. the legal opinion related to the Trust Agreement and C. the membership of the 3D FAC for the current fiscal year.

Appendix A: Trust Agreement

The 3DD Trust agreement: (Erskine Trust). This MOM includes only that paragraph applicable to the 3DD bequest funds.

**B. The residue at the distribution in
subparagraph A above shall be distributed as follows:**

**(i) One-third (1/3) to THE
PHOTOGRAPHIC SOCIETY OF AMERICA, INC., to be used for
its general purposes.**

**(ii) One-third (1/3) to the STEREO
DIVISION OF THE PHOTOGRAPHIC SOCIETY OF AMERICA, INC.,
to be used for its general purposes.**

The entire trust agreement is kept at PSA headquarters and is available to the committee or the 3D Division Board of Directors.

**3D Division Financial Advisory Committee
Master Operating Manual (MOM)
September 2020**

Appendix B: Legal Opinion – Oversight of PSA 3D Division Funds

Paul Winters, Attorney at Law stated opinion:

Photographic Society of America (“PSA”) is requesting guidance as to the proper oversight of certain restricted funds (“Funds”) PSA received some years ago under a charitable trust. For the reasons set forth below, we think that PSA’s usage of the Funds should be properly administered through the Executive Committee or, alternatively at the Board’s direction, through the Finance Committee.

A. Background

Pursuant to the terms and conditions of the trust instrument, the corpus of the charitable trust, after addressing certain administrative and other costs, was distributed, in the following proportions:

1. One-third to the Photographic Society of America, Inc., to be used for its general purposes.
2. One-third to the Stereo Division of the Photographic Society of America, Inc, to be used for its general purposes.
3. One-third to third party, not affiliated with PSA.

The Funds were comprised of the distributions under (1) and (2), above.

B. Assessment of the Funds’ Proper Beneficiary

We understand that at no relevant time has the Stereo Division of Photographic Society of America been a legal entity, separate from Photographic Society of America. Rather, the stereo division of PSA has historically been one of PSA’s specific programs focused on three-dimensional imagery. Accordingly, the charitable trust’s funds, which were directed to the Stereo Division were in fact granted to PSA, as the proper beneficiary, as restricted funds designated for the purpose of advancing PSA’s stereo division (3-D)-related programming. Such restrictions on charitable contributions are quite common and permissible under state charitable trust law. In receiving the restricted charitable contributions, PSA agreed to comply with the grantor’s wishes in using the Funds.

C. Assessment of PSA’s Proper Oversight of the Funds

Under the Illinois Not For-Profit Corporation Act, and the organizations bylaws, PSA is generally governed by its board of directors. Thus, authority to manage the Funds ultimately resides in the Board of Directors. However, under Illinois law and according to its bylaws, PSA has delegated certain corporate authority to three committees: the Executive Committee, the Finance Committee, and the Investment Committee. Each of these committees has authority

**3D Division Financial Advisory Committee
Master Operating Manual (MOM)
September 2020**

to act on behalf of PSA, and to legally bind the corporation as limited by the Bylaws and the Board of Directors. The purpose of the Investment Committee is not clearly set forth in the PSA Bylaws, and accordingly, we limit our assessment to the Executive Committee and Finance Committee.

1. The Executive Committee

Regarding the Executive Committee, PSA's Bylaws, Article X, Section A provides that "Management of the Society's operations and the administration of its affairs shall be vested in an Executive Committee as delegated by the Society's Board of Directors." That section further provides that the Executive Committee "shall establish the Headquarters of this Society and shall exercise all other administrative and managerial powers." We understand it has been the custom and practice for PSA Board of Directors to delegate oversight of the Funds to the Executive Committee.

In view of the above broad and general powers granted by the Bylaws to the Executive Committee, and in view of the Board's historical delegation of that function to the Executive Committee, we think that continued administration of the Funds through the Executive Committee is legal and proper.

2. The Finance Committee

Alternatively, the Board of Directors may determine to delegate oversight of the Funds to the Finance Committee. Like the Executive Committee, the Finance Committee is another committee with corporate authority to manage the Funds. There is some warrant for such delegation in PSA's Bylaws. Article XI, Section A provides that, "The Finance Committee shall be responsible for the day-to-day conduct of the Society's financial and legal business, and for the supervision of Society fiscal operations under practices and procedures approved by the Board of Directors or required by law." Specifically, the Finance Committee oversees intake of all restricted funds, as provided for in Article XII, Section H: "Restricted funds will be received by the Society only upon approval of the Finance Committee in accord with Society policies governing same." Because the Finance Committee is a standing committee with corporate authority which also handles intake of restricted funds, the Finance Committee is well positioned to continue to administer the Funds, if the Board so directs.

D. Summary

In view of the forgoing, we think it legal and proper for the Executive Committee or, in the alternative, the Finance Committee to administer the Funds, pursuant to the Board's direction and appointment. Both committees are standing committees with corporate authority, which we think is necessary for proper administration. Furthermore, the Bylaws-stated purposes of

3D Division Financial Advisory Committee
Master Operating Manual (MOM)
September 2020

each committee align well with the role the appointed committee would have administering the Funds.

Please let me know if I can be of further assistance.

PAUL WINTERS | Attorney at Law
| *Trusted Advisors to Nonprofits*
312.626.1600 (Main)

Our PSA's former president, John Davis, a retired lawyer, provides additional clarification:

Because PSA is a tax exempt organization under Section 501©3 of the US Internal Revenue Code, use of its assets or income to unduly benefit individuals who have a close or significant relationship to the Society (a so-called Private Inurement), is prohibited by the IRS and can risk the exempt status of the Society. Uses by the 3DD FAC of PSA assets or income amounting to private inurements will not be approved.

Further explanation: There are nuances to rules like this, of course. There are many legal writings and cases which deal with private inurements. For example, "...unduly benefit..." would not be a worry where an organization subsidized a portion of a meal at an organization event, or where a private benefit in a nominal amount relates to services to the organization, or where 3D glasses are provided to individuals as an insert to a Journal. Common sense and good judgment would be a part of any decision to spend funds. To pay the registration cost for members to attend a conference, on the other hand, would be an obvious violation of the rules. To provide a substantial amount of money to individuals not related to any services performed, a substantial private benefit, would be problematic. It would likely show up in an audit which is done each year. The big penalty is a loss of exempt status for the organization, but smaller penalties such as a fine to the organization by the IRS are possible

**3D Division Financial Advisory Committee
Master Operating Manual (MOM)
September 2020**

Appendix C –Committee Membership

For the fiscal year 2020-21:

Position	Name	Term
3D Division Chair	Robert Leonard	(time in position)
3D Division Treasurer (or 3D Division member if Treasurer same as Chair)	Lee Pratt	2 yrs. ending 2022
Divisions Vice President	Robert Benson	(time in position)
PSA Investment Committee member	Richard Cloran	2020-21
PSA member with accounting, legal and/or tax knowledge	John Davis	Chair – 2020-21, 2 yr term ending 2022
PSA member familiar with 3D Division	Lynn Maniscalco	2020-22
PSA Treasurer (ex officio)	Michael Jack	(time in position)