

TO: Members: FITNESS ASSOCIATION OF THE PATENT AND TRADEMARK OFFICE

FROM: Board of Directors: FITNESS ASSOCIATION OF THE PATENT AND TRADEMARK OFFICE

SUBJECT: Elections--Board of Directors

DATE: September 1, 2020

This is to advise you that the election for the Board of Directors is approaching and will take place from September 21, 2020 to September 30, 2020. The purpose of this memorandum is to outline how the elections will take place and to entice all the interested members who wish to run for the Board of Directors to do so.

Currently, there are three (3) Board positions available: three (3) Board positions for a term of three (3) years.

General Information about the Board:

The Board of Directors of the Association consists of a total of nine (9) directors elected by the regular members of the Association.¹ Members of the Board must be USPTO employees and regular members of the Association in good standing at the time of their election and while so serving on the Board.

Powers and Duties of the Board:

The power and duties of the Board include those necessary to carry out the purpose for which the Association exists and to protect and preserve the interests of the Association including, but not limited to the following:²

- Contracting for the management and operation of Association programs and activities.
- Contracting for insurance covering any potential liability to the Association, its managing agents, the Board or members.

¹ *The Board also consists of a non-elected PTO liaison appointed by the PTO. The liaison works with the elected Board members in carrying out the duties of the Board.*

²*Please note: Members of the Board do not receive any compensation for their service on the Board.*

- Contracting for any other services, equipment or supplies it determines are needed by the Association.
- Setting terms and conditions of membership, including dues and fee schedules.
- Establishing and enforcing rules and regulations for the use of Association facilities and for participation in Association programs and activities.
- Complying with the fiduciary duties of care, loyalty, and obedience. Complying with the fiduciary duty to care requires, *inter alia*, complying with FAPTO’s attendance policy (attached), which states that each Member of the Board physically check-in to the Fitness Center premises³ on at least two days per month⁴. Complying with the fiduciary duty of loyalty requires, *inter alia*, agreement with FAPTO’s Conflict of Interest Policy (attached). Failure to comply with the fiduciary duties is grounds for immediate dismissal from the Board of Directors.

General Overview on How the Election will work

Any eligible member⁵ of the Association willing to run for the Board **must** electronically and timely submit to the Board a completed application comprising: 1) a completed nomination form that is signed by ten (10) FAPTO members in good standing, 2) a personal statement, and 3) (optionally) a 150x212 pixel photograph of their self. The completed application must be submitted via email, no later than 2020-September-18 22:00 ET, to FAPTO@uspto.gov.

The **personal statement** must be no more than 100 words and inform the membership why the nominee should be elected to the Board and identify any experience the nominee may have. The personal statement **must be** in a Word™ (.doc or .docx) file that is double-spaced and in Times New Roman 14 pt. Font. **All words after the 100-word limit will be deleted from the personal statement.** Optionally, the candidate may also wish to submit a 150x212 pixel photograph of their self. The photo must be less than 200 kB and be in a PNG or JPEG format. Non-compliant photographs are subject to being cropped, compressed, or rejected. Any submission received after 2020-September-18 22:00 ET will not be considered.

At the time of voting, voting ballot forms will be e-mailed to all members at the Fitness Center. Voting will be held as described in the timeline below.

The membership will then vote for up to three Directors from the candidates running.

³ The Fitness Center premises at 501 Dulany St., Knox 1B45, Alexandria, VA 22114

⁴ Exceptions are made for medical or military leave, or any other leave authorized by the Board.

⁵ Eligible members of the Association are those with a “Regular Membership”, *i.e.* FAPTO members who are an employee of the United States Patent and Trademark Office (PTO), including full-time, part-time, temporary or contract employees. Members of the Association with an “Associate Membership”, *e.g.* non-PTO family members or retired PTO employees, are not permitted to vote or run for a position on the Board.

The results of the election will be announced October 2, 2020 and the new Board will meet on or about October 6, 2020.

Time Line for Elections

- September 18, 2020:** Completed Nomination Forms due by 22:00 ET, including a personal statement (100 word maximum) indicating why you wish to serve on the board. An optional 150x212 pixel, PNG or JPEG format, photograph may also be submitted. At a minimum, the candidate must email the nomination form and the personal statement to FAPTO@uspto.gov.
- September 18, 2020:** All eligible members who wish to receive a ballot must have a (preferably personal) e-mail address on file with the FAPTO by 22:00 ET.
- September 21, 2020:** Voting will commence. Ballots containing the personal statements and photographs will be e-mailed to eligible members.
- September 30, 2020:** Completed election ballots due by 16:00 ET.
- October 2, 2020:** Results announced.

What you do now

Think about running. The membership needs dynamic people who care about the Fitness Center to run for the Board. Enclosed is a copy of the Nomination Form. Start having it signed by members of the Fitness Association in good standing.

If you have any additional questions, please do not hesitate to call the election commissioner, Kevin Bechtel, at x0-5436.

Attendance Policy

- 1) The Board finds that compliance with the fiduciary duty to care requires, *inter alia*, that each Member of the Board physically check-in to the Fitness Center premises in Knox at least two days per month, absent just cause, *e.g.* medical or military leave, and that the Board may act to remove any Board Member found to be non-compliant with a fiduciary duty. Any Board member may propose removal of an alleged non-compliant Board member, and removal will be determined by a Board vote. The alleged non-compliant Board member is recused from their removal voting.

- 2) Members of the Board are required to attend meetings in-person, absent prior authorization from the FAPTO Board President. The FAPTO President may take in to account several factors, including the demonstration of good cause by the requesting Board member. Good cause can include any priority of performing regular duties associated with employment at the PTO. Participation in an alternate work schedule or plan, including TEAPP, however, does not satisfy the demonstration of good cause. The President has the discretion to rescind the prior authorization, if the President decides that the Board member is not effectively participating in meetings remotely, or if the facts supporting the demonstration of good cause have changed.

From article IV, section 5(b) of the FAPTO bylaws:

- b. Attendance of Board Members: All Board members shall attend each meeting of the Association. Should a Board Member be unable to attend a scheduled meeting, the Board member must notify the Secretary within 48 hours of the meeting, or within a reasonable time if the meeting is scheduled with less than 48 hours notice. A board Member's failure to notify the Secretary that he or she will not attend a scheduled meeting will result in an unexcused absence. Three (3) unexcused absences will result in the removal of the Board Member from the Board of Directors of the Association if mandated by a majority vote of the Board of Directors in attendance at the scheduled Board meeting following the third unexcused absence. This bylaw shall constitute notice to all Board Members that three (3) unexcused absences will result in the removal of a Board Member from the Board of Directors, subject to a majority vote of the Board of Directors.

Conflict of Interest Policy

And

Annual Statement

For Directors and Officers and
Members of a Committee with Board Delegated Powers

Article I -- Purpose

1. The purpose of this Board conflict of interest policy is to protect the Fitness Association of the Patent and Trademark Office (FAPTO) interests when it is contemplating entering into a transaction or arrangement that might benefit any interests of an officer or director of FAPTO or might result in a possible excess benefit transaction.
2. This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

Article II -- Definitions

1. **Interested person** -- Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
2. **Financial interest** -- A person has a financial interest if the person has, directly or indirectly, through business, investment, outside organization, or family:
 - a. An ownership or investment interest in any entity with which FAPTO has a transaction, arrangement, or contract,
 - b. A compensation arrangement with FAPTO or with any entity or individual with which FAPTO has a transaction, arrangement, or contract, or
 - c. A potential ownership in, a potential investment interest in, or a potential compensation arrangement with, any entity or individual with which FAPTO is negotiating a transaction, negotiating an arrangement, or negotiating a contract.

Compensation means any goods or services in excess of \$20.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board or Executive Committee decides that a conflict of interest exists, in accordance with this policy.

Article III -- Procedures

1. **Duty to Disclose** -- In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board or Executive Committee.
2. **Recusal of Self** – Any director may recuse himself or herself at any time from involvement in any decision or discussion in which the director believes he or she has or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists.
3. **Determining Whether a Conflict of Interest Exists** -- After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the Board will make a determination of a conflict of interest is discussed and voted upon. The remaining Board or Executive Committee members shall decide if a conflict of interest exists.
4. **Procedures for Addressing the Conflict of Interest**
 - a. An interested person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
 - b. The Board shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 - c. After exercising due diligence, the Board shall determine whether FAPTO can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
 - d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in FAPTO's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.
5. **Violations of the Conflicts of Interest Policy**
 - a. If the Board or Executive Committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
 - b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or Executive Committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article IV – Records of Proceedings

The minutes of the Board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or Executive Committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Article V – Compensation

A voting member of the Board who receives monetary compensation, directly or indirectly, from FAPTO for services is precluded from voting on matters pertaining to that member's compensation.

Article VI – Annual Statements

1. Each director, principal officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:
 - a. Has received a copy of the conflict of interest policy,
 - b. Has read and understands the policy,
 - c. Has agreed to comply with the policy, and
 - d. Understands FAPTO is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.
2. Each voting member of the Board shall annually sign a statement which declares whether such person is an independent director.
3. If at any time during the year, the information in the annual statement changes materially, the director shall disclose such changes and revise the annual disclosure form.
4. The Executive Committee shall regularly and consistently monitor and enforce compliance with this policy by reviewing annual statements and taking such other actions as are necessary for effective oversight.

Article VII – Periodic Reviews

To ensure FAPTO operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information (if reasonably available), and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations, if any, conform to FAPTO's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement or impermissible private benefit or in an excess benefit transaction.

Article VIII – Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, FAPTO may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

Revision History by the FAPTO Board
Initial Conflict of Interest policy adopted _____

Director and Officer
Annual Conflict of Interest Statement

1. Name: _____ Date: _____

2. Position:

Are you a voting Director? Yes No

Are you an Officer? Yes No

If you are an Officer, which Officer position do you hold: _____.

3. I affirm the following:

I have received a copy of the FAPTO Conflict of Interest Policy. _____ (initial)

I have read and understand the policy. _____ (initial)

I agree to comply with the policy. _____ (initial)

I understand that FAPTO is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of tax-exempt purposes. _____ (initial)

4. Disclosures:

a. Do you have a financial interest (current or potential), including a compensation arrangement, as defined in the Conflict of Interest policy with FAPTO? Yes No

i. If yes, please describe it: _____.

ii. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy? Yes No

b. In the past, have you had a financial interest, including a compensation arrangement, as defined in the Conflict of Interest policy with FAPTO? Yes No

i. If yes, please describe it, including when (approximately):

_____.

ii. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy? Yes No

Signature of director

Date: _____

Date of Review by Executive Committee: _____