MINUTES

BOARD OF DIRECTORS
St. Louis, February 19–20, 2016

182. <u>Call to Order, Devotion, Announcements, Agenda</u>

Chairman Michael Kumm called the meeting to order with all members present. Vice-President Herbert Mueller, devotional leader for the meeting, provided the opening devotion. A motion was introduced and carried to adopt the agenda as presented.

184. <u>Adoption of Consent Agenda</u>

Chief Administrative Officer Ron Schultz introduced the consent agenda for the meeting and presented it for board action. After a request was made and granted to remove the financial report from the consent agenda, a motion was introduced and carried to accept the consent agenda as changed:

WHEREAS, The Board of Directors has adopted a policy to allow use of a consent agenda; and

WHEREAS, The board's policy reads:

3.6.2 Consent Agenda

3.6.2.1 The board makes use of a consent agenda to expedite the conduct of routine business during board meetings in order to allocate meeting time to education and discussion of substantive issues.

3.6.2.2 The consent agenda should consist of routine matters that require board action. Typically, these items include approval of minutes, acceptance of officer and other written reports (excluding the quarterly financial/budget report), and acceptance of routine or non-controversial actions items.

3.6.2.3 The board chair shall be responsible to approve the proposed consent agenda for each meeting upon recommendation of the Chief Administrative Officer. The consent agenda shall be distributed with the meeting docket no less than one week prior to the meeting. The consent agenda will be presented to the board for adoption as soon as practicable after the opening devotion on the first day of the meeting.

3.6.2.4 Any item which appears on the consent agenda may be removed from the consent agenda by a member of the board. Items removed from the consent agenda will be considered at another time during the meeting as determined by the chairman. The remaining items will be voted on by a single motion. The approved motion will be recorded in the minutes, including a listing of all items appearing on the consent agenda.

Therefore be it

Resolved, That the Board of Directors herewith accept this consent agenda which includes the following:

- Officer Reports
  - Report of the President
  - Report of the First Vice-President
  - Report of the Secretary
  - Report of the Chief Administrative Officer
  - Report of the Chief Financial Officer
  - Report of the Chief Mission Officer
- Administrative Services Reports
  - Information Technologies
  - Mail Room – Copy Center
  - Human Resources (confidential)
- Financial Services Reports
  - Accounting
  - Internal Audit
- Board of Directors Committee Reports
  - Governance Committee
  - Personnel Committee
- Action Items
  - Approval of November 19–20, 2015 minutes

And be it further

Resolved, That the minutes of this meeting reflect the acceptance of the reports and other items as listed above (copies of reports and other items attached to the protocol copy of these minutes).

185. President Harrison Report

President Matthew Harrison reported that his and Vice-President Mueller's district visitations are nearly completed and have been a positive experience. He then spoke at length of demographic studies that continue to be conducted, now possible to the extent of learning how many LCMS people reside in every county of the United States. Noting that it is now more clear than ever how our country's birth rate has affected numbers, he made clear that even if our Synod's outreach could be increased to the level of the Mormons (who experience the most success among religious groups and church bodies), this would only stem our Synod's decline equal to the decline of our two largest districts. Today's birth rate is 30 percent of what it was in 1959. Looking at the birth rate of each state, South Dakota has not only the highest birth rate but is also the district with the least decline in Synod membership. On the other hand, New Jersey has the greatest decline in Synod membership—and also the lowest birth rate. This comparison lines up almost exactly in every district of our Synod and serves to demythologize other causes often given for our Synod's decline in numbers.

President Harrison went on to say that this does not say that evangelism is unimportant. It is all-important, and the Office of National Mission is developing modules to train trainers to train people on how to evangelize groups of people in various settings. But barring a national revival, we still will not be able, humanly speaking, to evangelize our Synod out of its decline. What we can and need to do is concentrate on evangelism, healthy workers, and healthy congregations. Reaching out to non-Anglo people is very important, and districts are working at this. And while our national situation is less than optimistic, the global prospects for Lutheran Christianity are indeed optimistic. With world opportunities burgeoning, millions of members and dozens of church bodies could be added to the International Lutheran Conference in the coming decades.

President Harrison concluded his oral report with comments regarding convention preparations, noting that issues surrounding the question of licensed lay deacons will likely be the most major issue to be addressed by the 2016 convention. He spoke of the importance of loyalty to the Lutheran Confessions while at the same time meeting a real need in the church evidenced by the interest in lay deacons, the goal being to get those deacons who are functioning as pastors ordained as pastors who have been examined, called, and ordained. He reported that the plan being proposed to the convention has been approved by the Commission on Theology and Church Relations and both seminaries.

He then responded to questions from the board.

186. Financial Report

Chief Financial Officer Jerald Wulf called attention to his printed report and especially the January 2016 financial statement. He noted that December, ordinarily a major month for contributions to the Synod, was disappointing in 2015, mostly in the area of restricted funds. Currently income is down $3.5 million compared to prior years. Any current budget concerns, therefore, have mostly to do with income, not control of expenses, as the program departments continue to under-spend their budgets (44 percent spent compared to 58 percent budgeted). He attributed the shortfall in restricted revenue in part to the performance of the stock market, which is not expected to settle down until calendar year 2017 due to the political environment surrounding the approach of the November 2016 elections.

He called particular attention to the January 2016 Statements of Financial Positions, showing a reduction in net worth of $11.6 million, explaining that this is in part due to how district contributions are pledged and received. For now it will be necessary to watch expenses, which unfortunately has the undesirable effect of a downward spiral, with less money leading to less ministry, which in turn leads to less money, which leads to less ministry, etc.

Following the report, a motion was introduced and carried to accept the financial report as presented.

187. Legal Reports

As the board prepared to receive reports from Sherri Strand and Aaron Lacey of Thompson Coburn LLP and Chief Administrative Officer Ron Schultz, a motion was introduced and carried to move into executive session to receive the legal reports.

187X. Executive Session I

After returning to open session, Chairman Kumm called on Secretary Raymond Hartwig for a report on 2016 convention matters.

188. 2016 Convention Matters

Secretary Raymond Hartwig reported regarding progress made and challenges faced as preparations continue for publishing the 2016 *Convention Workbook*. He described in particular the additional effort required as a result of the 2013 convention's addition of a few small paragraphs to existing bylaws, especially Bylaw 3.12.3.5 paragraphs (e) and (f).

He also distributed copies of an overture to the convention developed jointly by the International Lutheran Laymen's League and the Lutheran Women's Missionary League, inviting the 2016 Synod convention to celebrate 175 years of combined ministry and service of the two auxiliaries. He noted that the overture, however, requires an entity of the Synod to submit it for convention business. After inquiring whether the Board of Directors would care to be that entity, a motion was introduced and carried to submit the overture, as follows, to the 2016 LCMS convention.

To Celebrate 175 Years of Combined Ministry and Service of the LWML and ILLL

WHEREAS, The Lutheran Women's Missionary League (LWML) is celebrating 75 years of ministry and service to the church (1942–2017); and

WHEREAS, The International Lutheran Laymen's League (LLL) is celebrating 100 years of ministry and service to the church (1917–2017); and

WHEREAS, As auxiliaries of The Lutheran Church—Missouri Synod, the LWML and the ILLL exist as arms of the Synod, with the primary function of aiding the Synod, specifically in programs that extend the ministry and mission of the Synod; and

WHEREAS, The mission of the LWML is to assist each woman of The Lutheran Church—Missouri Synod in affirming her relationship with the Triune God so that she is enabled to use her gifts in ministry to the people of the world; and

WHEREAS, The mission of the ILLL is Bringing Christ to the Nations – and the Nations to the Church; therefore be it

Resolved, That The Lutheran Church—Missouri Synod in convention give thanks for the lay members of the LWML and ILLL; and be it further

Resolved, That The Lutheran Church—Missouri Synod in convention congratulate and commend the LWML and ILLL for their 175 years of combined ministry to the church; and be it finally

Resolved, That The Lutheran Church—Missouri Synod in convention stand and sing the Common Doxology with all glory to God in praise and anticipation of LWML and ILLL future ministry initiatives.

189. Fiscal Year 2016/17 Budget Outlook

Executive Director of Accounting Ross Stroh called attention to the corporate Synod Undesignated Support Budget worksheet (attached to the protocol copy of these minutes), marked "preliminary" and intended to be "a conservative estimate of unrestricted income expected." 2016/17 anticipated income totaling $17,648,386 will be nearly $700,000 less than 2015/16. Chief Financial Officer Jerald Wulf called attention to an accompanying report of 2016/17 district pledges, which account for $116,000 of the reduction in anticipated income.

190. Personnel Committee Actions

Personnel Committee Chairman Warren Puck announced his committee's intention to propose four action items having to do with salary matters. The first, proposing salary range adjustments, was formally introduced by the committee (supplemental materials attached to protocol copy of these minutes). During discussion, it was requested that all salary proposals be presented prior to acting upon them one at a time since a decision regarding one may impact another of the proposals. The committee withdrew its motion to adopt the first action item to accommodate the request.

Accordingly, all four proposed actions—to adjust salary ranges, to adopt a salary increase budget and bonus pool, to address the salary compression that exists at the officer level, and to set incumbent officer base salaries—were discussed at length, the latter two after the departure of the incumbent senior executives from the meeting.

1. Salary Range Adjustments 2016 – Following discussion of the four proposed actions, the first, "Salary Range Adjustments 2016" was again formally introduced by the committee. A motion to table the action failed (by show of hands and vote of the chair). After discussion, the resolution was adopted as follows.

   Background

   The Department of Human Resources conducts an annual review of local and national salary trends and compares them with current LCMS salary ranges and actual salaries. The objective of this analysis is to measure the ability of the International Center employers to remain competitive with the local not-for-profit market.

   This high level objective correlates with the LCMS compensation philosophy which was originally adopted by the board in 2006 and reaffirmed by the Personnel Committee in 2014:

   > In striving to be good stewards of the dollars entrusted to us, we shall pay fair salaries in a fashion which rewards performance to be able to attract, motivate, and retain employees.
   >
   > The term "fair" shall be interpreted as fair pay based upon the role within corporate Synod, striving to pay at or within ten percent of the market value for the job held (using not-for-profit standards to define the market value), and the incumbent's performance in the position.
   >
   > The top paid 150 parish pastors and the top paid 150 institutional executives will be used as a guideline for the placement of the Class 6 executive directors of the program boards and commissions, with some being higher and some being lower.

Action

WHEREAS, The salary range compensation methodology has been validated via the annual compensation analysis; and

WHEREAS, The results of the analysis indicate an adjustment to the salary range structure is required to remain compliant with the system; therefore be it

Resolved, That effective March 1, 2016, the salary ranges be adjusted by approximately 3.7 percent to reflect compliance with the 2006 Board of Directors philosophy of using the average of the top paid 150 parish pastors and the top paid 150 institutional executives as the basis for the Class 6 mid-point, the remainder of the salary scale to be adjusted accordingly; and be it further

Resolved, That as of July 1, 2016, employees whose base salary falls below the minimum for their pay grades shall have their salaries adjusted to reflect the new minimum for their grades to remain compliant with the system.

2. Salary Increase and Bonus Pool – The second action proposed by the Personnel Committee, "Salary Increase and Bonus Pool Effective 7/1/2016," was formally introduced by the committee. After additional discussion, the resolution, as follows, was tabled by action of the board.

Background

The Department of Human Resources conducts an annual review of local and national salary trends and compares them with the current LCMS salary ranges and actual salaries. The objective of this analysis is to measure the ability of International Center employers to remain competitive with the local not-for-profit market.

This high level objective directly correlates with the LCMS compensation philosophy which was originally adopted by the board in 2006 and re-affirmed by its Personnel Committee in 2014:

> In striving to be good stewards of the dollars entrusted to us, we shall pay fair salaries in a fashion which rewards performance to be able to attract, motivate, and retain employees.
>
> The term "fair" shall be interpreted as fair pay based upon the role within corporate Synod; striving to pay at or within 10 percent of the market value for the job held (using not-for-profit standards to define the market value), and the incumbents' performance in the position.
>
> The top paid 150 parish pastors and the top paid 150 institutional executives will be used as a guideline for the placement of the class 6 executive directors of the program boards and commissions, with some being higher and some being lower.

Proposed Action

WHEREAS, The annual salary review has been completed; and

WHEREAS, The local and national salary trends indicate non-profit organizations are awarding salary increases averaging 2.9 %; therefore be it

Resolved, That the salary increase budget" for 2016/2017 (FY17) be set at 3%, with some employees receiving more and some less, contingent upon performance; and be it further

Resolved, That the bonus budget for FY17 be set at .5% of the FY17 salary budget.

3. Officer Salary Management System – The third action proposed by the Personnel Committee, "Officer Salary Management System," was formally introduced by the committee. After the incumbent senior executive officers had been excused from the meeting, the resolution, as follows, was discussed and then failed to be adopted.

Background

The Department of Human Resources conducts an annual review of local and national salary trends and compares them with the current LCMS salary ranges and actual salaries. The objective of this analysis is to measure the ability of the International Center employers to remain competitive with the local not-for-profit market.

Per Board of Directors' Policy Manual section 5.6.6.6, the board approves the salaries of the Synod officers.

Research over the past several years validated the existence of a salary compression issue in the senior manager (SM1/officer) grade level. In FY15 and again in FY16, the Personnel Committee began to address the compression issue by adjusting the base compensation for four (4) of the six (6) SM1/officer positions better to align incumbents' compensation with market variables, *i.e.*, experience and tenure.

As the Personnel Committee considered a more defined approach for the board to determine salary increases for officers, the Department of Human Resources outlined a formulaic system for the board's consideration. This system outlines the parameters in which officers' salaries would be initially established and advanced, predicated upon final approval by the board.

Proposed Action

WHEREAS, The Personnel Committee continues to address the salary compensation that exists in the SM1/officer grade level; and

WHEREAS, The Board of Directors has recognized the need to align executive level salaries more appropriately within the salary range structure; and

WHEREAS, The proposed structure is predicated on standard compensation models and is aligned with the established pay range system; and

WHEREAS, The proposed system is in compliance with Board of Directors' Policy Manual section 5.6.6.6; therefore be it

Resolved, That effective July 1, 2016, the following formulaic compensation system be implemented to adjust and sustain the officer salaries in a manner that aligns with the current range structure and methodology:

Tenure	Percent to Mid-Point
New Hire	80%
5 Years+	90%
10 Years+	100%
15 Years+	110%
20 Years +	Annual Increases to Range

This system will be utilized for the following SM1/officer level positions: First Vice-President, Chief Administrative Officer, Chief Financial Officer, Chief Mission Officer, and Synod Secretary. This system will be the premise on which the recommended salaries would be established and maintained.

The incumbent would also be eligible for annual increases contingent upon performance and board approval; and be it further

Resolved, That the base salary for the President of the Synod shall be originally set and maintained no lower than 120% of the established mid-point of the SM1 grade level; and be it further

Resolved, That per bylaw requirements, the Board of Directors will continue to approve all officer salary adjustments on an annual basis; and be it finally

Resolved, That the executive director of human resources and the executive director of accounting determine the budget required to maintain compliance with the salary system and present this budget to the Board of Directors on an annual basis for approval.

4. Incumbent Officer Base Salaries – The fourth proposed action of the Personnel Committee, to set current incumbent officer base salaries, was set aside as no longer pertinent.

Discussion continued regarding how best to move forward in light of forthcoming budget discussions and decisions.

191. Concordia University System Matters

Chairman Kumm announced the next order of business, Concordia University System matters, whereupon a motion was introduced and carried to move into executive session. Concordia University System President Dean Wenthe, Concordia University System Board of Directors Chairman Gerhardt Mundinger, Chief Mission Officer Kevin Robson, and Sherri Strand and Aaron Lacey of Thompson Coburn LLP were asked to participate in the executive session also.

191X. Executive Session II

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192. Board of Directors Survey Overview

Chief Administrative Officer Ron Schultz provided information regarding a Board of Directors survey that board members will receive via email.

193. Fiscal Conference Report

First Vice-President Herbert Mueller reviewed the Fiscal Conference Report which was provided to all participants of the September 22, 2015 fiscal conference held in St. Louis with support from Thrivent Financial. Just over 100 people (members of the Board of Directors, Council of Presidents, and district representatives) heard four presentations, each of which was followed by table discussions. (A copy of the report is attached to the protocol copy of these minutes.)

194. Communications Visit

David Strand, Executive Director of LCMS Communications, provided a PowerPoint presentation to describe in general terms the manifold work of his department, ranging from managing the Synods Website and participation in social media (the LCMS has the largest Lutheran presence) to working with mission advancement to dealing with the secular media—with a annual $3.5 million budget. The work of his department is “fed and directed” by the President of the Synod, who casts the vision for the church. His department’s greatest challenge is to reach more people (presently only about 15 percent of LCMS families). Its goals include growing its involvement in social media, aligning its efforts with the Synod’s mission priorities, and collaborating with other Synod entities—especially mission advancement and the online mission project catalog. Its successes include its quality of work (receiving numerous awards annually), the success of projects such as the Wittenberg Project, its coverage of Supreme Court decisions, its lifting up of the Synod's life ministries, the film "The First Rosa," and the recent publication of the book by the sainted Otto Hintze regarding mission work in New Guinea.

195. Board of Directors Annual Compliance Documents

All members of boards and commissions are required annually to sign a form that states that they understand and acknowledge certain policies within the LCMS, *i.e.*, a "Best Practices Security Review," the "LCMS Conflict of Interest Policy," and the "LCMS Policy on Suspected Financial and Organizational Misconduct" (copies attached to protocol copy of these minutes). After brief explanation by Chief Administrative Officer Ron Schultz, copies of the "2016 Policies and Procedures Acknowledgement Form" were distributed for signatures by the members of the Board of Directors.

196. Audit Committee Report

Audit Committee Chairman Keith Frndak provided a brief oral report, noting his committee's review of Synod entity audits, its involvement in Concordia University System matters, and its review of the financial statements of all Concordia University System colleges and universities.

197. Regional Election Process

Chief Administrative Officer Ron Schultz presented the following proposed action that he and Secretary Raymond Hartwig had developed, "To Review and Enhance the Election and Nomination Process for Regional Members of the Board of Directors and LCMS Mission Boards." After it was introduced and during discussion, an amendment was introduced to restore an existing piece of the process whereby only the congregations of the given region may nominate individuals to regional board positions. After discussion, the proposed amendment failed. After further discussion, the main question was called and the proposed overture to the convention was adopted as follows.

> *Resolved*, That the Board of Directors authorize the submission the following overture to the 2016 convention titled "To Revise and Enhance the Election and Nomination Process for Regional Members of the Board of Directors and LCMS Mission Boards."

To Revise and Enhance the Election and Nomination Process of Regional Members Of the Board of Directors and the LCMS Mission Boards

Rationale

In 2010, The Lutheran Church—Missouri Synod in convention adopted changes to the Bylaws that allow for the regional election of certain vice-presidents and Board of Directors and mission board positions. While these regional elections have been well received, recent experience has shown that there are a number of deficiencies and opportunities for improvement to the current nomination and election processes.

Currently the submission of nominations for regional positions is restricted to congregations within the region. The final slates for these positions are populated with the five nominees who receive the highest number of nominations. In some cases, the slate includes persons who have low, single-digit numbers of nominations. The Board of Directors believes that expanding the pool for nominations will likely result in more nominees for consideration. Because the slate currently is compiled on the sole basis of number of nominations received, the is no opportunity for assessment to determine whether a candidate possesses sufficient qualifications necessary to perform the functions of the position for which he/she is being nominated. Additionally, the current process does not allow for floor nominations, which would provide an opportunity to amend the slate should there be a more qualified candidate in the pool of nominees.

The following proposed overture attempts to address each of the issues identified in the preceding paragraph. Additionally, it advocates for the inclusion of the Committee for Convention Nominations in the process of gathering and reviewing the nominees, tasking them to create a slate of the most qualified candidates by using previously established processes for elections to other LCMS positions.

Action

Resolved, That the Bylaws of the Synod be amended as follows:

~~PRESENT~~/PROPOSED WORDING

3.12 Nominations and Elections

Regional Elections

3.12.1 For all elections requiring regional representation, the Board of Directors of the Synod and the Council of Presidents acting jointly shall designate five geographic regions.

(a) Regions shall be designated 24 months prior to conventions of the Synod and shall take into consideration geographical and number of congregations information in the interest of fair representation.
(b) For purposes of regional elections, individuals will be considered a part of the geographical region in which their home address is located~~where their congregational membership is held~~. Canadian congregations will be placed as a whole into the region which the Board of Directors and the Council of Presidents deem appropriate.
(c) This information shall be shared immediately with all districts of the Synod.

…

Nominations and Elections of Regional Vice-Presidents

3.12.2.7 After the results of the first-vice-presidential election have been announced, the convention shall elect five regional vice-presidents according to the following nominations and elections process. ~~(This shall also be the process used for all other regional elections.)~~

(a) Each member congregation of a region (including any non-geographic-district congregations in that region) shall have been given opportunity to nominate two ministers of religion–ordained from the clergy roster of the Synod with residence in its designated region as candidates for regional vice-president.
(b) The Secretary of the Synod shall receive such nominations (signed by the president and secretary of the nominating congregation).
(c) The names of the five ministers of religion–ordained residing within the boundaries of each geographic region who receive the most nominating votes shall form the slate from which the Synod convention shall select by majority vote each regional vice-president.
(d) No opportunity shall be provided for additional nominations from the floor of the convention.
(e) Voting delegates to the national convention shall be entitled to vote for one of the candidates from each region. If no candidate receives a majority of the votes cast, the three candidates receiving the highest number of votes shall be retained on the ballot.

(f) Balloting shall continue with the candidate receiving the least number of votes eliminated until one candidate from each region has received a majority of the votes cast.
(g) Upon the election of the regional vice-presidents, a final election will take place ranking the vice-presidents by separate ballots with a simple majority of voting delegates determining the second, third, fourth, fifth, and sixth vice-presidents in line of succession.

Nominations and Elections of Regional Positions—Board of Directors and Mission Boards

3.12.2.8 The convention shall elect the regional positions for the Synod's Board of Directors and mission boards according to the following nominations and elections process.

(a) Approximately 24 months before a regular meeting of the Synod in convention, the Secretary of the Synod shall solicit from those agencies with positions to be filled descriptions of criteria for qualified candidates to serve in those positions.
(b) With such criteria in view, the Secretary shall issue the first call for nominations through a publication of the Synod and on the Synod Website 18 months before the convention, soliciting names from the agencies and officers of the Synod and the congregational and individual members of the synod, along with lay persons of the congregations of the Synod. Nominations may be received from persons or parties outside the region.
(c) All nominees for a particular regional position must reside within the boundaries of the region for which they are nominated.
(d) All incumbents eligible for reelection shall be considered to be nominees.
(e) The qualifications of each nominee shall be submitted together with the names on forms made available on the Synod's Website.
(f) All suggested names and information for consideration by the Committee for Convention Nominations shall be submitted to the Secretary of the Synod no later than nine months prior to the convention of the Synod.
(g) All nominations received shall be forwarded to the Committee for Convention Nominations, who shall select candidates according to the process outlined in Bylaw 3.12.3.6.
(h) Amendments to the slate of candidates developed by the Committee for Convention Nominations shall follow the process outlined in Bylaw 3.12.3.7.
(i) Voting delegates to the national convention shall elect the members of all elective regional positions following the process outlined in Bylaw 3.12.4.2.

Committee for Convention Nominations

…

3.12.3.6 The Committee for Convention Nominations shall select candidates for all elective offices, boards, and commissions except President, First Vice-President, and vice-president ~~elective~~ positions requiring regional nominations (Bylaws 3.12.2.7; 3.3.4.1; 3.8.2.2; 3.8.3.2).

Committee on Elections

3.12.4.2 The President shall determine and announce a period of time during the convention for the election of the members of all elective boards and commissions.

…

(e) Except in the elections of the First Vice-President and~~,~~ regional vice-presidents, ~~and regional board members,~~when a second or succeeding ballot is required for a majority, the candidate receiving the fewest votes and all candidates receiving less than 15 percent of the votes cast shall be dropped from the ballot, unless fewer than two candidates receive 15 percent or more of the votes cast, in which case the three highest candidates shall constitute the ballot.

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3.8.2.2 The Board for National Mission shall be comprised of eleven members:

1. Five laypersons and five individual members of the Synod (one from each region of the Synod) elected in the same manner as are regional members of the Board of Directors of the Synod (Bylaws 3.12.1 and <u>3.12.2.8</u> ~~3.12.2.7~~)
2. The President of the Synod or his representative

In 2016, the laypersons elected from the Great Plains and East/Southeast regions and the individual members elected from the West/Southwest, Central, and Great Lakes regions shall be elected to three-year terms.

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3.8.3.2 The Board for International Mission shall be comprised of eleven members:

1. Five laypersons and five individual members of the Synod (one from each region of the Synod) elected in the same manner as are regional members of the Board of Directors of the Synod (Bylaws 3.12.1 and <u>3.12.2.8</u> ~~3.12.2.7~~)
2. The President of the Synod or his representative

In 2016, the individual members of the Synod elected from the Great Plains and East/Southeast regions and the laypersons elected from the West/Southwest, Central, and Great Lakes regions shall be elected to three-year terms.

198. <u>Service to Ministry Report</u>

Chief Administrative Officer Ron Schultz introduced the Service to Ministry (S2M) Program for connecting the staff of the various departments of the International Center more closely with the ministry of the Synod. Chief Financial Officer Jerald Wulf spoke of the program's foundation, *i.e.*, that one's "vocation" as an important part of delivering the Gospel, that service/vocation at the International Center (all vital to the work of the International Center) should also be both a ministry in itself and a part of the ministry of the Synod.

The program advocates five principles:

1. Exhibit Integrity (Proverbs 11:3)
2. Demonstrate Competency (Proverbs 18:15)
3. Be Accessible (John 13:34)
4. Practice Stewardship (Matthew 25:14-30)
5. Embrace Collaboration (Ecclesiastes 4:12)

The overall goal will be to adopt goals that tie into LCMS mission priorities at all levels using the five group principles to develop group and individual objectives.

199. <u>Action Items</u>

(A) <u>Resolution to Support Concordia College – Alabama</u>

RESOLUTION TO SUPPORT CONCORDIA COLLEGE – ALABAMA

WHEREAS, The Lutheran Church—Missouri Synod (the LCMS) is a Missouri nonprofit corporation governed by its Board of Directors; and

WHEREAS, Concordia College – Alabama (CCA) is an Alabama nonprofit corporation governed by its board of regents; and

WHEREAS, CCA, as a separate legal entity formed by the LCMS, is subject to certain provisions of the LCMS Bylaws; and

WHEREAS, The LCMS Bylaws provide that CCA, like all other Concordia colleges and universities that were formed as separate legal entities by the LCMS and subject to the LCMS Bylaws, is required to submit certain documentation and reports to Concordia University System (CUS), a nonprofit corporation related to the LCMS; and

WHEREAS, The LCMS has always recognized and deeply appreciated the important cultural, spiritual, and educational role CCA has played in the Selma, Alabama community, and has always viewed CCA as a unique opportunity for ministry and, therefore, has voluntarily provided financial donations and other support to CCA for decades; and

WHEREAS, The LCMS, CUS, other Concordia universities, other Synod-related corporate entities, and individual members and congregants of the LCMS have provided CCA with significant financial, operational, and spiritual support throughout the institution's existence; and

WHEREAS, In the past several years, CCA has faced financial difficulties, and the LCMS and its related entities and others have studied the situation and offered counsel, advice, and financial support when possible; and

WHEREAS, The LCMS has faced difficult financial times in the past decade, the details of which were publicly disclosed as early as the 2007 convention in the State of the Synod report presented by the Chief Financial Officer of the LCMS; and

WHEREAS, In spite of the financial issues and challenges the LCMS has had to face, including a significant reduction in force at its national headquarters and the diminution of foreign missionaries and domestic ministries, the church continued to voluntarily grant support to CCA; and

WHEREAS, The Synod in convention passed a resolution requiring the LCMS to reduce the historical debt incurred in supporting the Concordia colleges and universities; and

WHEREAS, The LCMS historically has supported, and continues to support, a variety of ministries designed to develop, maintain, and assist the underprivileged and minorities in America and throughout the world; and

WHEREAS, Financial exigencies require the LCMS Board of Directors to make difficult decisions regarding allocating limited funds for unlimited potential ministries of the Synod; and

WHEREAS, The LCMS Board of Directors, for several years, and especially and intensely during the past two years, has considered carefully the financial and operational needs of CCA and CCA's future expected needs in light of the Synod's resources; and

WHEREAS, The CCA Board of Regents recently submitted requests and proposals to the LCMS Board of Directors for future financial support, which proposed two alternative options—one that CCA continue as a college under the auspices of the LCMS Bylaws and requirements of the CUS, and one that CCA would be divested from the LCMS and seek status as a recognized service organization (RSO); and

WHEREAS, Both options proposed by the CCA Board of Regents called for the LCMS to provide CCA with $12,000,000.00 to $18,000,00.00 over the next four years; and

WHEREAS, CCA has in the past requested financial assistance to obtain the services of a Chief Operating Officer to provide the necessary leadership to return to operating as a self-sustaining institution; and

WHEREAS, The LCMS Board of Directors has determined, in light of the LCMS revenues, expenses, and other missions that need financial support, that the LCMS currently does not have the financial resources to provide or commit such financial resources requested by CCA over the next four years; and

WHEREAS, The LCMS sincerely and wholeheartedly desires to support the ministry of CCA within the LCMS' financial means and in accordance with good stewardship and God-pleasing ways; and

WHEREAS, The LCMS has encouraged CCA to submit an overture to the Synod in convention for financial and spiritual support for its future; and

WHEREAS, The LCMS has encouraged the CCA Board of Regents to meet its fiduciary responsibility to CCA by taking such actions as developing a realistic and responsible business plan for the future, while at the same time adopting a contingency plan to provide for an orderly closure of the institution that would provide protections for the CCA students, faculty, and staff if the circumstances require such; and

WHEREAS, The LCMS wishes to offer support for a period of time that will allow the CCA Board of Regents to address the financial concerns of the college; and

WHEREAS, The LCMS joyfully and voluntarily, in accordance with the mission and objectives of the Synod Constitution and to the glory of God, wishes to provide donations to CCA totaling $4,000,000.00 in accordance with the terms below; therefore be it

Resolved, That

1. The LCMS will grant CCA the sum of $1,500,000.00 on or before March 15, 2016, to meet CCA's financial obligations, to be expended as the Board of Regents and CCA administration deem necessary; and an additional $200,000.00 to obtain the services of a Chief Operating Officer as earlier requested to provide the necessary leadership to become a self-sustaining institution.

2. The LCMS will grant CCA the sum of $1,500,000.00 on or before July 15, 2016, if CCA meets the following conditions by June 1, 2016:
   (1) CCA timely submits all financial reports and other information required under the LCMS Bylaws to CUS;
   (2) CCA submits a detailed pro forma plan for financial viability and stability to the CUS and to the LCMS Chief Financial Officer;
   (3) the LCMS Board of Directors, in its sole discretion, is satisfied that the documentation provided by CCA demonstrates meaningful progress by CCA towards long-term financial and operational viability; and
   (4) CCA develops a detailed Closure and Teach-Out Contingency Plan that addresses all issues raised in the guidelines attached to this resolution as *Appendix A* and specifically contemplates that CCA will operate as a self-sustaining institution;

3. The LCMS will grant CCA the sum of $500,000.00 on or before October 1, 2016, if CCA meets the following conditions by September 1, 2016:
(1) CCA timely submits all financial reports and other information required under the LCMS Bylaws to CUS;
(2) CCA pays off the amounts owed to CUS under its line of credit;
(3) CCA updates and submits a detailed pro forma plan for financial viability and stability; and
(4) the LCMS Board of Directors, in its sole discretion, is satisfied that the documentation demonstrates meaningful progress by CCA toward long-term financial and operational viability.

4. The LCMS will give CCA the sum of $300,000.00 on or before December 1, 2016, if CCA meets the following conditions by November 1, 2016:
(1) CCA timely submits all financial reports and other information required under the LCMS Bylaws to CUS;
(2) CCA restores all amounts borrowed from permanently restricted, temporarily restricted, and quasi-endowment funds of CCA;
(3) CCA updates and submits a detailed pro forma plan for financial viability and stability; and
(4) the LCMS Board of Directors, in its sole discretion, is satisfied that the documentation demonstrates meaningful progress by CCA towards long-term financial and operational viability.

Appendix A

Guidelines for the Preparation of a Closure and Teach-Out Contingency Plan

The closure of a postsecondary institution is a multi-step effort that involves a wide range of legal and operational considerations. This memorandum examines those considerations that will be of greatest importance to Concordia College Alabama (the "College") when contemplating a potential closure, and which should be included in the College's closure and teach-out contingency plan (hereafter referred to as the "preliminary teach-out plan"). The College's approach to managing these fundamental considerations will inform the development of any official teach-out plan that might one day be required, as well as any related teach-out agreement, and dictate the core content of its communications with regulators, employees, students, and all other stakeholders.

I. Developing the Preliminary Teach-Out Plan

As the College's accreditor, the Southern Association of Colleges and Schools, Commission on Colleges (the "Commission"), notes in its policy guidance, the "decision to close an institution requires specific plans that provide for the students, the faculty, and the administrative and support staff, and the disposition of the institution's assets."[1] An institution's teach-out plan details these "specific plans," setting forth the fundamental strategy that will inform the College's actions and communications from the moment the closure is announced through to the dissolution of the organization. Prior to implementation, the official teach-out plan must be reviewed and approved by the Commission, and it may be prudent, depending on the closure strategy, to consult the U.S. Department of Education ("USED").[2] For an institution contemplating closure, the drafting of a *preliminary* teach-out plan is thus a logical and appropriate first step. This process occurs prior to any formal decision on the part of the institution to pursue closure, is carried out in a confidential setting, and may be characterized as a planning exercise. It is entirely possible that an institution will never act upon a preliminary teach-out plan, as circumstances can, and often do, change. However, if an institution is required to initiate closure, the existence of a sound preliminary teach-out plan will greatly facilitate a smooth and timely process.

[1] *Closing a Program, Site, Branch or Institution*, pg. 2.
[2] Often, a school's state authorizing agency also must approve a teach-out plan and/or teach-out agreement. However, as an in-state, non-profit institution that has been in continuous operation for 20 years or more as of July 1, 2004, the College is not regulated by the Alabama Commission on Higher Education and is exempt from oversight by the Alabama Department of Postsecondary Education, Private School Licensure Division. See Ala. Admin. Code r. 300-1-1-.01 and Alabama Code 16-46-3, respectively.

Accordingly, the College should prioritize the development of a preliminary teach-out plan as the first step in the evaluation of a closure scenario. Following, we have set out the fundamental considerations that should be addressed in a preliminary plan. We have included those items that the Commission mandates be addressed in any official teach-out plan, as well as various considerations that, in our experience, should be addressed to facilitate a smooth process. We expect that including a range of individuals from the College in the development of a preliminary plan likely would make for a stronger document, but caution against involving any party, from the College or elsewhere, that cannot be trusted to maintain confidentiality. As we discuss below, maintaining control of the timing and substance of communications regarding any potential closure is of utmost importance.

A. <u>Whether to Involve Another Institution</u>

At the outset, the College should consider whether it intends to involve another postsecondary institution in the closure and teach-out process. There are costs and benefits to this approach that should be weighed carefully.

When an institution carries out a closure on its own, it commits to remaining open until all current students have withdrawn, transferred, or graduated. While this approach avoids the complications that arise when an outside entity is involved, it also introduces its own set of challenges. For example, because an institution cannot predict whether students will withdraw or transfer, it cannot be certain as to the actual closure date. At best, it can predict when the last student will graduate if all current students successfully complete their programs (an unlikely outcome). As such, closure is a moving target, which greatly frustrates efforts to manage human and capital resources.

Indeed, even where the student population decreases in a predictable fashion, it can be challenging to retain the faculty and staff necessary to teach the remaining student population through to closure, while simultaneously reducing the workforce, as needed, as students depart. Inevitably, once employees learn of the decision to close, they will begin looking for other opportunities.

And perhaps most significantly, a unilateral teach-out can prove costly. For example, if the College has freshman in its baccalaureate programs at the time it determines to close, it could take four to six years for all such students to graduate. The institution would be faced with the prospect of maintaining a facility, gradually reduced in size and resources, for an extended period of time. For many distressed institutions, a prolonged, unilateral teach-out is simply infeasible, even if preferred for regulatory or other reasons.

In light of the foregoing, schools often elect to identify one or more postsecondary institutions that can manage the teaching-out of their students following closure. The closing institution sets a date certain on which it will cease operations, and contracts with a partner institution to manage the teach-out of its remaining students following the official closure date. This approach typically permits the institution to close in a shorter period of time. In addition, the certainty associated with a designated closure date enables the institution to more effectively manage its human and capital resources, often producing better outcomes for employer and employee alike.

However, as one would expect, this approach also introduces various complexities. As an initial matter, the institution must identify partner institutions that are willing and able to conduct the teach-out. Ideally, the College would be able to identify a single partner institution that shares the College's accreditor, participates in the federal financial aid programs, offers similar programming, and is willing and able to teach-out *all* of the College's students.[3] Depending on the closing institution and its program portfolio, this can be a tall order.

As a practical matter, it also is desirable for the partner institution to be geographically proximate to the College, thus making it relatively easy for students to attend. This having been said, geographic proximity of the partner institution is not always essential. Some institutions have successfully identified online teach-out opportunities for their students, as well as with institutions that have made arrangements for the teach-out to be carried out by the partner institution at the closing institution's physical site. This scenario actually is fairly common, and regulators tend to be accommodating as it mitigates the burden placed upon students.

Though we do not believe this to be an issue in the present case, when determining whether to involve another institution in a teach-out, it also is important to consider whether the closing institution is contending with

[3] In instances where a partner is only able or willing to teach-out certain programs, an institution may be forced to identify multiple teach-out partners.

conditions that might deter potential partners from participation. For example, if the closing institution were involved in an ongoing lawsuit or government investigation that could create risk for a prospective partner, either directly or indirectly (*i.e.*, by virtue of negative publicity), it may dissuade partners from becoming involved. Similarly, significant, public resistance to the closing by students, employees, alumni or other stakeholders also could discourage a partner from entering the fray.

Institutions contemplating the involvement of a partner institution also should be aware of potential exposure under the federal loan discharge regulations. USED regulations provide that the Department may discharge the loans of any student who "[d]id not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed."[4] The regulations define a school's closure date as "the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary."[5]

Loan Discharge Exposure

When considering exposure to loan discharge, there are several significant points to keep in mind. First, a student remains eligible for a closed school loan discharge even when an institution makes arrangements for a partner institution to conduct a teach-out, and even if the student initially engages in the teach-out. Under federal regulations, so long as a student does not *complete* his or her program through the teach-out, his loan discharge eligibility continues intact.[6] Second, the Department may, in its discretion, discharge *all* of the loans the student took on to pay for the program. In other words, the discharge is not limited to the loans awarded for the term prior to the closure. Third, when such a discharge occurs, students assign to USED their rights to pursue reimbursement, and the Department may seek such reimbursement against the school, its principals, its affiliates, their successors and other third parties. Indeed, federal law specifically provides that any principal or affiliate may be held liable for the total amount of loans approved for discharge.[7] Finally, the regulations do not limit the time in which students may submit claims to loan holders. Thus, exposure may extend well beyond the school's closure date.

All this having been said, it also is important to note that a student's loans are not automatically discharged when an institution closes. Rather, each individual student must apply to the Department for a loan discharge, and the Department must then determine to act. Though not impossible, in our experience, it would be *extremely* unusual for students participating in an orderly closure and teach-out to apply for loan discharge en mass. Typically, a very small percentage of students apply for loan discharges, if at all, and applications usually are not filed until well after the school has closed.

There also are strategies that institutions may be able to employ to mitigate exposure to loan discharges. As noted above, a student typically is eligible for a loan discharge only if he or she was enrolled during the 120 days preceding the closure date.[8] Thus, an institution can limit potential loan discharge liability be incentivizing students to transfer in advance of the 120-day mark. In addition, the College may seek to establish new transfer and articulation agreements with outside institutions to facilitate student transfers. One institution announced a planned closure nearly a year in advance of the official closure date, and provided students a tuition discount if they elected to transfer outright prior to the beginning of the next (and final) term. This strategy significantly reduced the number of students still in attendance when the institution closed, simplifying the teach-out and reducing loan discharge exposure.

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[4] 34 CFR 685.214(c)(1)(i)(B). See also 34 CFR 682.402, which sets out similar conditions for the discharge of loans made under the now defunct Federal Family Education Loan Program.
[5] 34 CFR 685.214(a)(2)(i).
[6] 34 CFR 685.214(c)(1)(i)(C).
[7] 20 USC 1087(c)(1).
[8] We say "typically" because USED may extend the 120-day period if it determines that "exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law." 34 CFR 685.214(c)(1)(i)(B).

Closing institutions also should develop a plan for retaining select student records beyond the federally required minimum retention period to ensure that, if USED pursues reimbursement, the school may access these records to confirm or refute students' discharge claims. Specifically, the College would want to be able to demonstrate that borrowers did not complete their programs for reasons *other* than the school closure, and since liability extends only to students who withdraw within 120 days of closure, the College would want to be able to establish students' exact withdrawal dates.

The Teach-Out Agreement

If ultimately the College determines to engage another institution to assist in a teach-out, it will be required to draft a teach-out agreement. The teach-out agreement (not to be confused with the teach-out *plan*) is the written contract between the closing institution and the partner institution that details the various terms upon which the teach-out will be carried out. The teach-out agreement details the mechanics of the teach-out, to include the transition of academic and student service responsibilities, the management of records, stakeholder communications, federal financial aid, tuition refunds, and various financial and operational obligations. A teach-out agreement will be consistent with, and in many cases echo, the processes and determinations established in the teach-out plan.

Prior to implementation, the Commission must approve a teach-out agreement. The Commission does not specify a format for teach-out agreements, but notes in its publication, *Substantive Change for SACSCOC Accredited Institutions*, that it expects any teach-out agreement to (i) be with an institution that is accredited by a nationally recognized accrediting agency, (ii) be consistent with applicable standards in the *Principles of Accreditation* and with SACSCOC policies (iii) and to provide for the equitable treatment of students by ensuring that:

> 1. the teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the closed institution; and
> 2. the teach-out institution demonstrates that it can provide students access to the program(s) and services without requiring them to move or travel substantial distances.[9]
>
> In certain circumstances, the institution also may want, or be required, to offer USED or the State an opportunity to review the agreement.

B. <u>Timing</u>

Once an institution has determined whether it will conduct the closure and teach alone, or with a partner, it can move on to establishing the basic framework for the closure. The bookends for any closure process are the enrollment cessation date (the date new enrollments would cease), and the projected closure date.

We recommend that the cessation date coincide with the date the institution's Board formally elects to initiate a closure, and the date the closure decision is announced publicly. This timing is important for a variety of reasons. On the one hand, were the College to continue enrolling students *after* the official determination had been made to close, serious ethical issues would be raised. On the other hand, if the College ceases enrollments in *advance* of the official closure determination, it likely will lose the opportunity to control the announcement of the closure, as the cessation of all enrollment activity will undoubtedly signal to the campus community that a decision has been made. It also is important to make the public announcement quickly following the official decision, both to pre-empt any suggestion that the Board was not timely and transparent, and because, as a practical matter, it will become increasingly difficult to prevent news of the decision from "getting out."

We also suggest that the College have in place a detailed human resources plan for its admission team as of the cessation date, and be ready to communicate that plan at the same time the closure decision and the cessation of enrollments is communicated to the campus community. While many employees of the College will contribute to the teach-out effort, admissions staff may no longer be required following the cessation of enrollments. The College also should consider whether any marketing, recruiting, or lead generation contracts with third parties can and should be cancelled on or immediately following the cessation date. Clearly, the institution does not want to continue paying for such services when it is no longer enrolling.

[9] See pg 23.

With regard to the date of closure, the College ideally should elect a formal closure date at least one semester, and preferable two semesters, into the future. As a general matter, regulators will look more favorably on an institution that provides students, faculty, and staff with a meaningful period of time to consider their options and plan for the transition. A multi-term timeframe also will permit additional time to affect an orderly closure, and can mitigate the risk of subsequent student and employee litigation. And as noted above, an extended timeframe offers additional opportunity for students to transfer or withdraw in advance of the 120-day loan discharge window.

The College also should take care to close at the end of a term. If an institution participating in the federal financial aid programs closes midway through an academic period, it may be required to refund significant amounts of federal financial aid funds because such funds were "unearned" by the associated student borrowers. By closing at the end of the term, the College increases the likelihood that all financial aid funds distributed to students for attendance during the term have been earned, and no refunds are required.

C. Management of Students

Chief among the concerns of the College's regulators will be the treatment of students throughout the closure and teach-out process. Accordingly, in preparing the preliminary teach-out plan, the College should give considerable attention to the manner in which academic programming, student services, and student communications will be carried out. Emphasizing this point in its guidance, the Commission observes that even during the final semester of operation "students have the right to expect basic minimal services… not only in the academic division, but also in the business office, financial aid office, registrar's office, counseling, and other essential support services."[10] Specific items addressed in the preliminary teach-out plan should include:

- Whether the College will make any special offers of accommodations for affected students. Such accommodations might be financial, residential, or transportational, or specific to the nature of the teach-out. For example, we worked with one institution that provided computers (no longer needed by the institution) and internet access to students who agreed to transfer into an online program to complete their studies. The institution should consider whether and to what extent such accommodations may be offered, how the offer of such accommodations will be communicated by the College and accepted by the student, and whether the accommodations are subject to any contingencies.
- How the College will manage requests for leaves of absence, repeat coursework, or re-enrollment following the announcement of the closure. Often institutions simply state that such requests will not be granted. But it is important to articulate this decision to students, as it typically constitutes a departure from existing policy. In addition, the teach-out plan should anticipate and provide for the communication of any other significant policy departures that might impact students during the teach-out.
- Whether and to what extent graduate and career services support will be available following the institution's closure.
- Whether students electing to participate in a teach-out plan will incur any *additional* charges or expenses.
- If students are participating in a teach-out with a partner institution, how the College will ensure that students are able to continue receiving federal or state financial aid.
- In cases where students have held *institutional* scholarships or grants, whether there are funds available, and arrangements can be made, to support students while participating in a teach-out at partner institutions.
- Whether special arrangements will be made to package student academic records so as to facilitate transfer.

D. Management of Faculty and Staff

The preliminary teach-out plan also should reflect the College's basic strategy regarding the management of its faculty and staff leading up to and following the closure. The College should seek to identify those individuals who most likely will be needed to complete the teach-out, and consider retention bonuses or other measures to ensure they remain.

The College also should consider its process for identifying those individuals who are no longer needed, how and when such a determination will be communicated, and what resources will be made available to former employees to facilitate their finding a new job. In making these determinations, the College also should examine whether there is a disproportionate impact on protected classes (*i.e.*, race, gender, age, etc.).

[10] *Closing a Program, Site, Branch or* ***Institution***, pg. 2

Individuals who are not selected to participate in the teach-out may claim their non-selection was due to their protected class status, or that the College's decisions had a disproportionate impact on protected class members. In addition, as the Commission notes in its guidance, the College should seek to ensure that "reasonable notice is given to all employees and that the reasons for retaining some personnel longer than others are based on satisfying the minimal needs of students and the legal requirements for closing."

The College also should be aware of, and consider addressing the following human resources issues that arise in the context of a closure:

- If members of faculty and staff are part of a union, there may be a duty to bargain with the union as to the closure of the facility and other personnel issues.
- The Worker Adjustment and Retraining Notification Act ("WARN") requires most employers with 100 or more employees to provide 60 days' notice of plant closings that will result in loss of employment for more than 50 employees. In addition, the notice itself must satisfy certain specified requirements (we are more than happy to provide additional counsel on WARN Act compliance if needed).
- Many times in academia, employees have term contracts (contracts that guarantee employment for a certain amount of time, where employment usually cannot be terminated absent certain circumstances). In these instances, many of the contracts expressly state the conditions necessary to terminate the contract. In addition, the College may be required to pay out the remaining salary due under such contracts. Thus, it will be important to analyze any such contracts, to ensure their provisions are satisfied.

E. <u>Academic Records and Financial Aid Transcripts</u>

At all levels, postsecondary regulators expect a closing institution to have in place a plan for the permanent maintenance of academic transcripts, as well as a process by which former students may request such transcripts. In addition, USED requires that closing institutions make arrangements for the storage of all academic *and* financial aid records for a minimum of three years.

In our experience, where an institution is part of a university system, records typically are housed either at a sister institution, or at a location maintained by the system. Keep in mind, if the College determines to involve another institution in a teach-out, records for those students likely will be transferred to the partner institution at least for the duration of their studies, if not permanently (this is a point that would be clarified in the related teach-out agreement).

During the period leading up to the closure, and thereafter as appropriate, the College should include information in its student communications regarding record storage and the process to request transcripts. In addition, the College should consider how it might communicate to past students where records are being stored and what the accessibility to those records will be. For example, the College might post this information on a legacy website, and also distribute the information to any alumni mailing list.

On a final note, the Commission, in its guidance, states that "[w]here possible, a copy of a student's record should also be forwarded to the individual student." This directive is unusual among regulators. While nearly all regulators expect closed institutions to ensure that former students can access permanent records, it is rare that a regulator suggests an affirmative obligation to provide every student with a copy of his or her transcript. In some cases, a student may not be eligible to receive a transcript (*e.g.*, where there is an outstanding balance owed the College). Also, it is unclear to us whether this directive applies only to students participating in the teach-out, or to all former and current students. As the institution proceeds towards closure, this will be an item to discuss directly with Commission staff.

F. <u>Disposition of Assets</u>

The preliminary teach-out plan should contemplate, at least in broad strokes, the College's plans for the disposition of assets. At this stage it may be difficult to map out a disposition strategy in detail, but the College should be aware that the Commission will expect this issue to receive due consideration in the official teach-out plan submitted for approval. The Commission also will expect that the plan provide that sufficient resources will be allocated to ensure to the needs of students, faculty, and staff during the period leading up to closure.

In its guidance documentation relating to the closure of an institution, the Commission offers the following additional thoughts, which we believe to be well stated:

Arrangements for the sale of the physical plant, equipment, the library, special collections, art, or other essential holdings, and for the disposition of any endowments or special funds must be explored. In the case of wills, endowments, or special grants, the institution should discuss with the donors, grantors, executors of estates, and other providers of special funds, arrangements to accommodate their wishes…

Every effort should be made to develop defensible policies for dividing the resources equitably among those with claims against the institution. One of the most effective ways of achieving this goal is to involve potential claimants in the process of developing the policies. Time and effort devoted to carrying the process to a judicious conclusion may considerably reduce the likelihood of lawsuits or other forms of confrontation.
The Commission also suggests in its guidance that institutions consider "the possibility of soliciting one-time gifts and donations to assist in fulfilling its final obligations." Any such effort would need to be carefully considered to avoid running afoul of state laws regarding timing of solicitations of donations relative to the decision to close (charitable solicitation laws).

Alabama Business and Non-profit Entities Code

In addition to heeding the requirements described above, and in addition to complying with any applicable bylaws of The Lutheran Church-Missouri Synod, the College also will need to ensure that its assets are distributed in accordance with Alabama laws governing non-profit corporations. Statutory provisions regarding the requirements for dissolving a non-profit corporation can be found at Ala. Code §§ 10A-3-7.01-10A-3-7.17. Though much of this activity would occur in the final days preceding a closure, we have provided a brief summary here of the requisite process.

An Alabama non-profit corporation wishing to affect dissolution first must adopt a resolution to dissolve. If the non-profit corporation has members entitled to vote, two-thirds of these members must approve the resolution. If the non-profit corporation does *not* have members entitled to vote, the resolution must be approved by a majority of the directors.

After the non-profit corporation adopts its resolution to dissolve, it must file a *Statement of Intent to Dissolve* with the Office of the Judge of Probate in the county where its corporation's Certificate of Formation was filed. Upon filing the *Statement of Intent to Dissolve*, the non-profit corporation must cease its operations. For this reason, the filing should take place only after all campus activities have ceased (*i.e*., on or after the official date of campus closure).

At this stage, following the filing of the *Statement of Intent to Dissolve*, the College would formally distribute its assets in accordance with the applicable statutory requirements, found in Alabama Code § 10A-3-7.02. First, assets must go to satisfy any of the College's outstanding liabilities. Any assets conditionally held by the College upon the requirement that the College exist must be returned, and any assets held by the College subject to limitations permitting the use of such assets for charitable, religious, eleemosynary, benevolent, educational or similar purposes must be transferred to a similar organization. Remaining assets are to be distributed in accordance with the College's governing documents, and as described in the College's plan of distribution. Notably, because educational institutions are exempt from reporting to the Alabama Attorney General, the College is *not* required to obtain approval of its disposition plan from the Attorney General's Office (as is required in many other states). See Ala. Code § 13A-9-71(f).

As its final act in the State of Alabama, the College would file *Articles of Dissolution* with the Office of the Judge of Probate in the same county where the non-profit corporation filed its *Statement of Intent to Dissolve*.

Federal Internal Revenue Service

Typically, if an entity is exempt from federal income tax and files a federal tax return (*e.g*., Form 990), when it dissolves it needs to file a final Form 990 and answer the questions on the form that pertain specifically to dissolving entities (*e.g*., Schedule N—Liquidation, Termination, Dissolution, or Significant Disposition of Assets). It is also required to attach a copy of its dissolution documents (*e.g*., *Articles of Dissolution*). Any remaining assets must be distributed in accordance with the provisions in the dissolution clause in the articles (*e.g*., to another 501(c) (3) organization).

G. <u>Communications Strategy</u>

Importantly, the preliminary teach-out plan should include a communication strategy that contemplates both stakeholder and agency interactions. The goal of the plan should be to ensure that key communications are deliberate, well timed, consistent, and controlled. Among other things, the plan should:

- Designate the person or persons who will have primary responsibility for carrying out communications with regulators, students, faculty, and staff, as well as with the media. Such communications should at all times be accurate, straightforward, and consistent. In the midst of a campus closure, it can be tempting when communicating unfortunate news to editorialize, speculate, or make false promises, all of which can have significant consequences for and institution. Consequently, the individuals responsible for communications also should be responsible and steadfast, as well as compassionate.
- Determine the primary means for carrying out communications to the campus community. For example, an institution might plan for key communications to take place through campus meetings or assemblies. Written communications could be distributed at such meetings, and thereafter distributed electronically. We also have worked with institutions that have created websites dedicated to closure information, which contain copies of official communications relating to the closure, FAQ documents designed to respond to common questions, and links to useful resources.
- Determine when and how the institution will go about "listening" and responding to its stakeholders' concerns. Without fail, a closure announcement will prompt a flood of questions and correspondence. The College should be prepared to patiently manage these inquiries. It should distribute contact information for persons approved to field questions relating to the closure, and include this contact information in closure correspondence. The institution also could consider creating forums for faculty, staff and students to provide feedback and express concerns. Finally, the College should consider how it will communicate back to such stakeholders the steps it has taken to address their concerns, where possible.
- Determine when and how the institution will first notify regulators of its intentions to close. Regulators often will suggest that institutions reach out as soon as they believe a closure is possible. We agree that early and frequent coordination with regulators is important. And it is critical that this initial notification precede any public announcement that the institution is going to close (lest regulators begin to receive calls or inquiries before the agency has been informed). This having been said, we typically advise that regulators be informed only shortly before the initial public announcement is made to reduce the likelihood that a regulator might inadvertently reveal that the institution is closing prior to the public announcement.
- Determine when and how the institution will manage communications with creditors (who frequently come calling when a closure announcement is made), as well as inquiries from the press.

Finally, we recommend that the communication strategy in the preliminary teach-out plan include a draft closure protocol that sets out key communications and events, and contemplates their timing relative to one another. While this protocol almost certainly will be revised and updated as the teach-out plan is finalized, and when and if the institution proceeds to closure, its inclusion in the preliminary teach-out plan will ensure that a meaningful.

Following the Concordia College – Alabama action, a related motion was introduced and carried: "*Resolved*, That the Chief Financial Officer of the Synod work with CUS President Dean Wenthe to use accumulated earnings of the Concordia University System risk endowment pool to finance the financial assistance provided to Concordia College – Alabama."

A second motion was introduced as the board continued with action items: "*Resolved*, That the chairman of the Board of Directors review existing bylaws governing closure of institutions (Bylaw 3.6.6.5 [k]) and provide proposals for bylaw changes in time for the 2016 LCMS convention." After brief discussion, the motion carried.

B. <u>Executive Limitation for Mission Advancement Fundraising and Donor Care Costs</u>

Chief Financial Officer Jerald Wulf introduced this proposed action, which was then formally introduced by Governance Committee Chairman Christian Preus and adopted by the board without discussion.

WHEREAS, The funds required by corporate Synod to carry out its assigned duties, tasks, and ministry work come from God's people, reflecting the reality that corporate Synod has no independent source of funding; and

WHEREAS, Raising funds and providing appropriate and necessary care for those who contribute is not without costs, which corporate Synod can only pay from resources provided to it by its constituents; and

WHEREAS, Prior to the 2010 convention-mandated reorganization of the national office, all of corporate Synod's costs associated with provision of fundraising and donor care services were included within the operating budgets of the major program units but not readily identifiable to the public; and

WHEREAS, These fundraising and donor care costs have now been consolidated into corporate Synod's Mission Advancement Department, which performs vital functions in serving each donor on behalf of all Synod units; and

WHEREAS, Mission Advancement has been tasked with generating financial support for the overall operations of corporate Synod in both unrestricted and restricted form and both current and deferred gifts beyond what the Synod supplies via regular worship offerings; and

WHEREAS, Mission Advancement is structured to represent diligently the interests of every contributing constituent, to assist potential donors as they contemplate charitable gifts to corporate Synod and its various ministries, to ensure donor intent is fulfilled, and to provide appropriate acknowledgment and receipting of contributions; and

WHEREAS, Corporate Synod has explored and tested many alternatives for financing its fundraising and donor care activities; and

WHEREAS, It is desirable to allocate corporate Synod's fundraising and donor care costs equitably and fairly across all classes of gifts and all of the various ministry areas, and to be open and transparent with respect to fund corporate Synod's operations; therefore be it

Resolved, That the Board of Directors, in providing for the costs of fundraising and donor care efforts, herewith adopt the following policy with respect to fund the Mission Advancement unit:

4.2 Board of Directors' Executive Limitation on Budget Matters

The Chief Financial Officer, in consultation with the Synod's officers, the President of the Foundation, the International Center Facilities Committee, the Committee for Human Resources, and the executive directors of the mission offices, commissions, and departments, is responsible for presenting to the Synod's Board of Directors for approval at its May meeting the annual operating and Capital Budgets for corporate Synod, and for necessary adjustments in the course of the year. In carrying out these responsibilities, the Chief Financial Officer shall:

…

4.2.9 <u>Set an effective and equitable support rate (percentage) applicable to all charitable gifts, grants, and bequests, including district pledge receipts.</u>

- <u>4.2.9.1 Such rate shall be at or below the limit of "prudent" as defined by donor advocacy groups such as the Better Business Bureau's Wise Giving Alliance, Charity Navigator, and GuideStar, but which is sufficient to fund the Mission Advancement unit as it provides fundraising and donor care efforts.</u>
- <u>4.2.9.2 In determining the annual support rate, the Chief Financial Officer shall take into account actual Mission Advancement expenditures as a percentage of all audited Synod expenditures over the three most recently completed fiscal years.</u>

C. Recognized Service Organization Overture to 2016 LCMS Convention

Chief Administrative Officer Ron Schultz provided background regarding the origin and purpose of this proposed overture to the 2016 LCMS convention. Upon its formal introduction and ensuing discussion, a motion to amend the overture by deleting its sixth whereas paragraph was carried. The resolution was then adopted, as follows.

> *Resolved*, That the Board of Directors authorize the submission of an overture to the 2016 LCMS convention titled "To Convene Task Force to Review Recognized Service Organization Program and Bylaws," as shown below.

To Convene Task Force to Review Recognized Service Organization Program and Bylaws

WHEREAS, The Synod has a lengthy history of recognizing the contributions made by service organizations as they fulfill the call to love our neighbors (Mark 12:31); and

WHEREAS, There currently are more than three hundred recognized service organizations in the program, including social service agencies, mission societies, camps, and schools; and

WHEREAS, The granting of recognized service organization (RSO) status by the Synod signifies that a service organization, "while independent of the Synod, fosters the mission and ministry of the church, engages in program activity that is in harmony with the programs of the boards of the Synod, and respects and does not act contrary to the doctrine and practice of the Synod" (Bylaw 6.2.1); and

WHEREAS, The needs of the Synod, the work of social service agencies, and the regulation and oversight by governmental agencies have all changed significantly over the 30-plus years of the program; and

WHEREAS, Concerns have been raised over the years by various constituencies within the LCMS, including program leadership and the Board of Directors, as to the objectives of the program and the current policies and procedures associated with the administration of the program; and

WHEREAS, The LCMS desires and encourages its RSOs to live out their Lutheran identity in the services and programs they provide; and

WHEREAS, The RSO program is intended to benefit the church by contributing to its effectiveness in witness, mercy, and life together; and

WHEREAS, A thorough review of the RSO program was conducted in 2006-2007 by Synod staff which brought revision and improvement to the Synod process of recognition of RSOs; and

WHEREAS, A review of the needs of the Synod, including the work of social service agencies, mission societies, and other entities granted recognition status; the impact of government regulations and oversight; and a review of mutual benefits to the Synod and RSOs should be undertaken; therefore be it

Resolved, That the 2016 LCMS convention authorize the formation of a Recognized Service Organization (RSO) Task Force that is charged with the following responsibilities:

- Review and report on the original purpose and intent of the RSO program and its predecessors;

- Determine the needs of and benefits to the Synod with respect to the RSO program and identify the best model for the Synod to use to engage with organizations that foster the mission and ministry of the church and engage in programs that are in harmony with the programs of the Synod;
- Recommend changes to the RSO program or the elimination of the program or replacement of the current RSO program with a new relationship model that provides benefit to the Synod and the social service agency, or develop and recommend other solutions;
- Recommend appropriate changes to the LCMS Bylaws, as needed; and
- Ensure that all recommendations maintain the importance of agencies that are recognized by the LCMS foster the mission and ministry of the church, engage in program activity that is in harmony with programs of the Synod, and respect and not act contrary to the doctrine and practice of the Synod;

and be it further

Resolved, That this task force begin work immediately following this convention, and that the members of this task force be the Secretary of the Synod, the Chief Mission Officer, the Chief Administrative Officer, the executive director of the Office of National Mission, the director of the RSO program, a representative from the Office of the President, a representative of the Council of Presidents, and the chief executive officer of one or more RSOs selected by the task force; and be it finally

Resolved, That this task force make its first report and recommendations to the Synod's Board of Directors and the President of the Synod by August 1, 2018, with a final report and recommendations to be presented to the 2019 LCMS convention.

D. <u>Succession Planning—Interim Appointments</u>

Personnel Committee Chairman Warren Puck briefly described the purpose of this action by the board and formally introduced it on behalf of his committee. The resolution was adopted without discussion, as follows.

<u>Background</u>

In accordance with the Bylaws, board policy, and human resources policy re appointment of interim persons, each board, commission, and department is to identify a person to provide interim direction and leadership to the board, commission, or department in the event that there is an unexpected resignation, disability, disposition, or death of the staff executive currently serving.

Since the board has the responsibility for appointing someone to serve in these positions during a vacancy, the board needs to identify who will serve during an interim vacancy such as one noted in the policy below:

> It is important that all boards, commissions, or departments identify a person to provide interim direction and leadership to the board, commission, or department in the event there is an unexpected resignation, disability, disposition, or death of the staff executive currently serving. The board, commission, or department must be able to carry out the work in process and be capable of continuing its normal routine, as much as possible, during unsettling times. Such proactive measures will assure all involved with a sense of preparedness rather than chaos. The districts, congregations, and members will be well served because there is a procedure in place.
>
> The board, commission, or department should not take the appointment of an interim person lightly. The selection needs to be made on the basis of the needs of the board, commission, or department and the necessary skills required to reasonably assure that the primary functions will continue during a short term vacancy. The interim appointment should be considered a short-term contingency arrangement until the

executive is able to return or, if necessary, until a call or appointment of a new executive is accomplished. Therefore, the following guideline is to be adhered to:

- Each International Center board, commission, or department, in coordination with its staff executive, shall identify an individual to assume primary responsibility for overseeing, on an interim basis, departmental operations in the case of resignation, disability, disposition, or death of the executive currently serving.
- If the position responsibilities require clergy or roster status, the individual identified to serve during the interim shall also be expected to meet such a requirement.
- The International Center board, commission, or department shall review annually its contingency plan to verify that the best interest of the board, commission, or department will be served should implementation be required. The contingency plan is to be shared in writing annually with the President, the executive director of the Synod's Board of Directors, and the director of human resources.
- Other corporate entities operating under common policies at the International Center shall disclose compliance to a contingency plan.
- The director of human resources shall retain a confidential file on all contingency plans should there be a need for implementation.

Action

Resolved, That the Board of Directors name the following individual to serve during a board-authorized interim vacancy until action by the board can be taken to appoint someone to fill the vacancy.

Chief Administrative Officer:	Val Rhoden-Kimbrough
Chief Financial Officer:	Ross Stroh
Secretary of the Synod:	Herbert Mueller

These names are to be forwarded to the Department of Human Resources, which shall maintain this list as required, should the need for an appointment of an interim be necessary.

E. Change of Board of Directors Meeting Date

Chief Administrative Officer Ron Schultz explained the need and purpose for this resolution to change the date of the September 2016 Board of Directors meeting. After brief discussion and a decision by the board determining the date to which the meeting date would be changed, the following resolution was introduced and carried.

Background

The Board of Directors adopted a revised triennial meeting schedule during its November 2013 regular meeting, giving September 15–16, 2016 as a meeting date, with a footnote indicating that the date for this meeting was "tentative, dependent upon the scheduling of new board/commission member installations." The installation date has been confirmed: September 10, 2016 at 10:00 A.M.

Action

Therefore be it

Resolved, That the September 2016 Board of Directors meeting, previously scheduled for September 15–16, be changed to begin Thursday, September 8, at 1:00 P.M., to continue until Friday, September 9, 5:00 P.M., also to include attendance at the installation service scheduled for 10:00 A.M. on Saturday, September 10.

F. Concordia Theological Seminary Board of Regents Vacancy

Personnel Committee Chairman Warren Puck called the board's attention to its need to fill at lay member position on the Concordia Theological Seminary Board of Regents. Three names were forwarded by the Bylaw 3.2.5 nominating committee for the board's consideration: David Daniels, Taylorsville NC; Darin S. Osland, Muscatine IA; and John Powers, Whitefish Bay WI.

By ballot vote, the board appointed David Daniels of Taylorsville, North Carolina to fill the vacant position on the board of regents.

200. Floor Committee and Convention Plans

Chief Administrative Officer Ron Schultz called attention to the convention report of the Board of Directors to be printed in the 2016 *Convention Workbook* (attached to the protocol copy of these minutes) and reported that all members of the board have been registered for the convention.

He noted that not all members of the board will be available to participate in Floor Committee Weekend, May 27–30, following the May board meeting, May 26–27. He reminded the board of lodging and transportation arrangements and of the role of the board for the weekend meetings: to be available and to observe, providing input as appropriate, noting the list of floor committees and the topics they will be addressing provided in the docket for the meeting.

Regarding meetings of the Board of Directors at the convention, he reported that the board will meet for lunch on two of the days of the convention, and will meet for dinner on Wednesday evening.

201. Committee/Officer/Board Time

Chairman Kumm invited comment directed to any of the committees or officers, or the board itself. No questions or comments were forthcoming.

202. Topic(s) for Next Board Meeting Agenda

Chairman Kumm noted that the content of the May board meeting is pretty much established as the board will be deciding budgets and hearing from the Mission Advancement unit. He invited board members to share other topics with him prior to the May meeting.

203. Adjournment

After brief discussion of the impact of this meeting's failure to complete salary decision-making, a motion was introduced and carried to adjourn the meeting. The meeting was closed with a reading from 2 Thessalonians 3, its benediction serving as words of benediction to close the meeting.

Raymond L. Hartwig, Secretary