

# Kansas Board of Regents

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*Confidential Exit Analysis Related to the Retirement of Dr. Jon Wefald  
President of Kansas State University*

Prepared by Grant Thornton LLP

April 27, 2009

## SECTION 1: ENGAGEMENT SUMMARY

### Engagement Overview, Scope and Approach

On October 21, 2008, Grant Thornton LLP (“Grant Thornton”) was engaged by the Kansas Board of Regents (the “Regents”) to assist the Regents in the performance of an exit analysis of certain non-State funded accounts administered and/or controlled by President Jon Wefald of Kansas State University (“KSU” or the “University”) or his direct subordinates.

The key objective of this engagement was to evaluate whether financial transactions involving these employees within the specified accounts for the period 2003 to the present were for legitimate business purposes and were appropriately documented and approved.

An analysis of specific accounts and entities identified by the Regents and the Kansas State University Foundation (“Foundation”) for the period 2003 to the present was conducted. The identified accounts and entities included:

- Kansas State University Alumni Association (“Alumni Association”);
- Foundation account funds provided for the benefit of the University, specifically funds provided to the National Institute for Strategic Technology Acquisition and Commercialization (“NISTAC”) and its affiliated entities and the Kansas State University Golf Course Management and Research Foundation (“KSUGCMRF”), and the Discretionary Funds provided for President Wefald and former Vice President for Institutional Advancement Bob Krause; and
- Intercollegiate Athletics Association (the “Athletics Department”) non-State funded accounts.

In conducting our analysis, Grant Thornton:

- Interviewed President Wefald and other key personnel of the University, the Alumni Association, KSUGCMRF, the Foundation, the Athletics Department and NISTAC;
- Analyzed general ledgers of the KSUGCMRF, the Foundation, NISTAC and its affiliated entities, and the Athletics Department and performed testing of certain account transactions;
- Analyzed Statement of Substantial Interest forms, Conflict of Interest and Time Commitment forms and employment contracts and related documents for various individuals; and
- Analyzed minutes of meetings of Boards of Directors and various Committees for the entities reviewed.

Our services were provided in accordance with the Statement of Standards for Consulting Services promulgated by the American Institute of Certified Public Accountants and, accordingly, do not constitute a rendering by Grant Thornton or its partners or staff of any legal advice, nor do they include the compilation, review or audit of financial statements. Because our services were limited in nature and scope, they cannot be

relied upon to discover all documents and other information or provide all analyses that may be of importance in this matter. For instance, any procedures we performed cannot be relied upon to give assurance that any defalcations or fraudulent transfers that might have taken place were discovered.

## Scope Limitations

Not all information requested by Grant Thornton was available for our inspection. Specifically, supporting documentation for 13 selected cash disbursements by the Athletics Department, the original July 2, 2001 employment contract information and the 2005 BMA Annuity information for former Athletics Director Tim Weiser and the NutriJoy, Inc. Stockholders' Agreement among The Coca-Cola Company ("Coca-Cola"), NISTAC and NutriJoy, Inc. ("NutriJoy") related to Coca-Cola's purchase of a controlling interest in NutriJoy were not available.

Mr. Bob Cavello, Associate Director of Athletics, indicated that the supporting documentation for the 13 selected disbursements, representing \$845,000, could not be located or was no longer available due to normal record retention practices. The payees in question included former Athletics Director Tim Weiser, former Head Football Coach Bill Snyder, and former Vice President for Institutional Advancement and Athletics Director Bob Krause, among others. Therefore, we were unable to determine whether these transactions were for a legitimate business purpose and were appropriately documented and approved.

Mr. Cavello originally indicated that the Athletics Department had neither a copy of Mr. Weiser's original 2001 contract nor the documentation supporting the Athletics Department's 2005 purchase of the BMA Annuity to fund the matching of Mr. Weiser's deferred compensation account. Mr. Cavello indicated that he requested these documents from Mr. Weiser's advisors, but they did not become available during our engagement. Subsequently, we were told that Mr. Krause indicated that there was no July 2, 2001 contract for Mr. Weiser, although one was specifically noted by date in the "Third Amendment to Contract for Tim Weiser." We have identified possible tax issues related to Mr. Weiser's employment contracts and various payments made to him there under. Please refer to the "Intercollegiate Athletics Association" section of this report for further detail on this issue.

Mr. Kent Glasscock, President of NISTAC, indicated that the NutriJoy Stockholders' Agreement related to Coca-Cola's purchase of a controlling interest in NutriJoy could not be shared with Grant Thornton due to confidentiality concerns. Therefore, our analyses rely solely on verbal representations regarding the rights that accrue to the various classes of common stock. Our interest in this document was to determine if the University and the Foundation, through their investments in and financial support of NISTAC, are being treated fairly in comparison to other classes of investors. Please refer to the "NISTAC Cluster" section of this report for further detail on this issue.

## Primary Findings

Significant progress and growth has occurred at the University during the tenure of President Wefald with the significant assistance of former Vice President for Institutional Advancement Bob Krause. Notable accomplishments under President Wefald's leadership include:

- University enrollment has increased 52%;
- Academic excellence has grown as evidenced by the 125 Rhodes, Marshall, Truman, Goldwater and Udall Scholarships awarded to KSU students since 1986;
- Significant funds have been raised contributing to the rebuilding of the Athletics Program and 2.2 million square feet of new buildings and renovations throughout the campus;
- The University has developed a prominent Food Safety and Security Program; and
- KSU has drawn national attention through its selection as the site for the new National Bio and Agro-Defense Facility.

President Wefald shared with us that his management style is to hire good people and to delegate to them the authority and responsibility they need to accomplish the goals he has set for them. Therefore, rather than having a straight line of reporting to President Wefald, we found that many of the entities, for which we were instructed to analyze accounts, report to President Wefald through the Office of Vice President for Institutional Advancement, concentrating a great deal of responsibility and oversight in that office. Mr. Krause held the position of Vice President for Institutional Advancement from its initiation in August 1986 through October 1, 2008.

Over the years, as President Wefald delegated responsibilities to Mr. Krause, Mr. Krause's sphere of influence grew from student recruitment and retention, University relations and alumni affairs to include extensive responsibility for coordinating the activities of the Alumni Association, the Foundation and the Athletics Department with those of the University. In addition, Mr. Krause was given responsibility for economic development on behalf of the University. Therefore, Mr. Krause's involvement in most of the entities and or accounts we were asked to analyze was notable as detailed below.

- Mr. Krause's involvement in the Athletics Department was more than cursory. During the period under review, Mr. Krause participated in contract and compensation negotiations for head coaches and Athletics Director Tim Weiser, often being the only signatory to the contract on behalf of the Athletics Department or University as the Vice President for Institutional Advancement and/or the sole member of the Athletics Director Compensation Committee. Mr. Krause was also very involved in the financial affairs, fundraising efforts and strategic direction of the Athletics Department. Prior to his current position as Athletics Director, Mr. Krause served as the Interim Athletics Director on four occasions. Due to the level of Mr. Krause's involvement in the Athletics

Department, President Wefald approved an “Overload Contract” for Mr. Krause under which the Athletics Department compensated him in an amount approximating 25% of his base salary as Vice President for Institutional Advancement from 2003 through 2008. A payment was also approved in 2001 for Mr. Krause’s responsibilities as Interim Athletics Director during that year.

- Mr. Krause was one of the initial visionaries of and has been instrumental in the development and funding of the Colbert Hills Golf Course. He personally guaranteed a portion of the construction debt and is currently making payments on a personal promissory note related to that guarantee. He also serves as the Assistant Treasurer of KSUGCMRF.
- Mr. Krause was also responsible for and very involved in economic development efforts on the University’s behalf. Mr. Krause served as the University’s representative to NISTAC, the Executive Chair of NISTAC, as a director of a wholly-owned subsidiary of NISTAC and currently serves as Chairman of NutriJoy, one of the most commercially successful private businesses incubated by NISTAC. Reportedly, the 2008 sale of a majority interest in NutriJoy to Coca-Cola would not have occurred without Mr. Krause’s involvement and leadership.

However, we found that the concentration of influence by President Wefald through his aggregation of reporting and oversight duties in Mr. Krause has led to a blurring of the lines between some of the entities we reviewed. The Foundation, the Alumni Association, KSUGCMRF, NISTAC and the Athletics Department view themselves, and are viewed by others, as part of or associated with the institution of KSU. However, they are all separate legal entities apart from the University. They all have as a common goal the advancement of KSU and have at times entered into transactions with one another in support of that goal. However, as separate legal entities, any transactions among them should be appropriately disclosed, approved and documented allowing for transparency of intent and substance. The failure to do so raises the question of the legitimacy of the transaction. Our report details numerous instances where transactions between the various entities did not meet this standard.

We found that conflicts of interest are inherent in the structure of NISTAC as the bylaws allow directors/officers of the NISTAC Cluster to personally own stock in and serve on the boards of directors of incubated companies. This duality of interest, to the University through its involvement in NISTAC and to the incubated companies as directors and/or stockholders, should be closely monitored by the University and the Foundation.

We found that KSUGCMRF and the Athletics Department have entered into transactions with employees of the University or its various affiliate entities which may result in favorable tax treatment to that employee in situations where it may not be warranted and/or may result in tax liability and possible penalties to the involved entity. In these particular instances, Grant Thornton is not offering a tax opinion on the transactions, but rather bringing the transaction forward so that appropriate tax opinions may be sought.

The overall findings of our work revealed that reporting responsibility for and, in some cases, apparent authority over KSUGCMRF, the Foundation, NISTAC and the Athletics Department is effectively centered under Mr. Krause. This situation has led to a laxity in some transactions among those entities and with the University. There is a need for more formalization, structure, accountability and transparency in the manner in which the University and its related entities interact and transact with one another. Conflicts of interest can and do exist which should be carefully considered and managed to ensure that the legitimacy of transactions and to avoid perceptions of possible self-dealing or mismanagement.

## SECTION 2: ENGAGEMENT SCOPE AND APPROACH

### Objective and Scope

The key objective of this engagement was to evaluate whether financial transactions within the specified accounts that fell under the control of President Wefald or one of his direct subordinates for the period 2003 to the present were for legitimate business purposes and were appropriately documented and approved.

### Approach

In conducting our analysis, Grant Thornton:

- Interviewed key personnel of the University, the Alumni Association, KSUGCMRF, the Foundation, the Athletics Department and the NISTAC Cluster;
- Reviewed general ledgers of the KSUGCMRF, the Foundation, the NISTAC Cluster, and the Athletics Department and performed testing of certain account transactions;
- Reviewed Statement of Substantial Interest forms, Conflict of Interest and Time Commitment forms and employment contracts and related documents for various individuals; and
- Reviewed minutes of meetings of Boards of Directors and various Committees of certain entities.

### Interviews

We interviewed the following key personnel:

- Dr. Jon Wefald, President of the University;
- Mr. Bob Krause, Athletics Director, former Vice President for Institutional Advancement of the University and former Executive Chair of NISTAC;
- Mr. Bruce Shubert, Vice President of Finance and Administration of the University;
- Ms. Fran Willbrant, Controller of the University;
- Ms. Cindy Bontranger, Budget Director of the University;
- Ms. Amy Button Renz, President of the Alumni Association;
- Mr. Brad Sidener, Senior Vice President and Chief Financial Officer of the Alumni Association;

- Mr. Bernie Haney, Executive Director of KSUGCMRF and Assistant Director/Development-Golf Programs of the Athletics Department;
- Mr. Gary Hellebust, President and Chief Executive Officer of the Foundation;
- Mr. Bruce Kent, Counsel for Gift Planning of the Foundation;
- Mr. Alan Klug, Vice President for Administration and Finance and Chief Financial Officer of the Foundation;
- Ms. Christy Scott, Compliance Officer of the Foundation;
- Ms. Lois Cox, Director of Investments of the Foundation;
- Ms. Deborah Depew, Assistant Director of Accounting Services of the Foundation;
- Mr. Kent Glasscock, President and Executive Committee member of NISTAC;
- Ms. Victoria Appelhans, Vice President of Finance for NISTAC;
- Mr. Bob Cavello, Associate Director of Athletics;
- Mr. Kim Linck, Assistant Business Manager of Athletics; and
- Ms. Tami Breymeyer, Director of Licensing.

### Document Reviews

We reviewed the following documentation:

- The financial statements for the University, the Alumni Association, KSUGCMRF, the Colbert Hills Golf Course, the Foundation, the NISTAC Cluster, and the Athletics Department for the fiscal year-end periods of June 30, 2003 through 2008;
- Reviewed the Discretionary Funds at the Foundation and the general ledgers of KSUGCMRF, the NISTAC Cluster and the Athletics Department and performed testing of certain account transactions;
- Reviewed Statement of Substantial Interest forms, Declaration for Conflict of Interest and Time Commitment forms and employment contracts and associated documents for various individuals.

## SECTION 3: FINDINGS AND RECOMMENDATIONS

### Kansas State University Alumni Association

#### Scope

Our work at the Alumni Association involved interviewing President Amy Button Renz and Senior Vice President and Chief Financial Officer Brad Sidener. We reviewed the Alumni Association fiscal year-end financial statements for 2003 through 2008. However, no cash disbursement testing was performed at the Alumni Association at the request of the Foundation. Mr. Sidener indicated that neither President Wefald

nor any of his direct reports received any compensation or reimbursement from the Alumni Association during the period under review.

### **Overview**

The KSU Alumni Association is a 501(c)(3) educational non-profit organization. The Alumni Association reports to the President through the Office of the Vice President for Institutional Advancement. It receives State funding to maintain a database of KSU alumni. Maintenance of the database is currently shared with the Foundation for fund raising purposes. In the past, the Alumni Association and the Foundation charged each other for services with respect to the alumni database but that has been discontinued as it was proving to be a wash. The database contains approximately 260,000 names including geographic and biographic data, and donation receipts history.

Revenues come from membership dues, annual gifting, affinity partnerships, Alumni Center use, catering commissions, sponsorship money and advertising. There is a tiered rate for Alumni Center use depending on affiliation (KSU Departments, the Foundation and Alumni Association members receive discounts). Usage fees up to \$1,250 annually for President Wefald's wife are waived so she may use the Alumni Center for public relations. Both the Foundation and the Athletics Department receive a \$2,000 annual allotment. Usage above that amount (which is the norm) is billed at the appropriate rate. The Alumni Association may waive usage fees for specific events at its discretion. The Foundation hosts 10 to 15 events each year. The Athletics Department hosts six to eight events each year.

Expenses are primarily staff payroll and benefits, general administration, programs, magazines and recruitment events. The Alumni Association owns the building but the University owns the surrounding land, including parking lots. Programs include 30 Athletics events and "watch parties." The Alumni Association also uses the University jet on a per mile basis, although sometimes the charge is shared with the Athletics Department (e.g. a coach speaks at an Alumni Association sponsored event).

The Alumni Association maintains its own bank account and also has an Imprest Account at the University Controller's Office to pay KSU-related "vendors" such as student payroll, University jet, grounds keeping and miscellaneous minor University charges.

### **Findings and Recommendations**

Based on the information available to us for our review, we had no material findings or recommendations.

## **Kansas State University Golf Course Management and Research Foundation**

### **Scope**

Our work at KSUGCMRF and the Colbert Hills Golf Course (the "Golf Course") involved interviewing KSUGCMRF Executive Director Bernie Haney regarding KSUGCMRF's general structure, history and the

2005 debt restructuring; Foundation Assistant Director of Accounting Services Deborah Depew with regard to KSUGCMRF's books and records maintained by the Foundation; and Director of Licensing Tami Breymeyer regarding the interface between KSUGCMRF, the Golf Course and the Athletics Department.

Mr. Haney, KSUGCMRF's sole employee, is a "fractional employee" in that 10% of his time is dedicated to KSUGCMRF and 90% is dedicated to the Athletics Department for his position as Assistant Director/Development – Golf Programs. Mr. Haney's responsibilities for KSUGCMRF include fundraising, budget development and oversight, maintaining/developing relationships with benefactors and corporate partners, and serving as the liaison among KSUGCMRF, the Golf Course, the Athletics Department, the Men's and Women's Golf Coaches, Grand Mere Development<sup>1</sup> and the University.

We reviewed KSUGCMRF's and the Golf Course's fiscal year-end financial statements for the years 2003 through 2008 as well as KSUGCMRF's general ledger for the same period. We tested cash disbursement transactions equal to or greater than \$500 for selected individuals (representing 80.6% of the category) and all other cash disbursements, including payroll, equal to or greater than \$2,500 (representing 74.1% of the category). Neither President Wefald nor any of his direct reports received any compensation or reimbursement from KSUGCMRF or the Golf Course during the period under review.

### Overview

KSUGCMRF is a 501(c)(3) educational non-profit organization and a wholly-owned subsidiary of the Foundation. It is a separate legal entity from the University and the Athletics Department. KSUGCMRF is supported primarily through specified private donations, overseen by the Foundation. KSUGCMRF receives private donations in support of its on-going operations; dedicated for the construction of a new 13,500 square foot clubhouse to be completed in January 2010; and for "The First Tee." "The First Tee" is a national not-for-profit organization designed to give disadvantaged and minority youths an opportunity to be involved in golf.

The Golf Course is owned by KSUGCMRF and is leased (at no cost) to Golf Generations, Inc. Golf Generations is a for-profit corporation responsible for all daily operations and maintenance of the Golf Course, for which it charges KSUGCMRF an annual fee of \$24,000. Golf Generations employs seven full-time and 50-60 part-time employees which are paid through the operations of the Golf Course. Net income from operations of the Golf Course rolls up into KSUGCMRF's financials which in turn roll up into the financials of the Foundation.

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<sup>1</sup> Grand Mere Development is the luxury residential/commercial development surrounding the Golf Course. Grand Mere Development is owned by members of the Vanier family. The Vanier family are significant supporters of the University and the Athletics Department and are the in-laws of Mr. Krause. Mr. Krause stated that he and his wife do not have any financial ownership or interest in Grand Mere Development.

KSUGCMRF has ties to the Athletics Department through support for KSU's Men's and Women's Golf Teams. The Golf Course serves as the home course for the Men's and Women's Golf Teams for which it receives \$20,000 a year from the Athletics Department. The January 1, 2006 Operating Lease between KSUGCMRF and Golf Generations, Inc. indicates that "...the Kansas State men and women's golf teams shall have free use of the Golf Course, except that such members shall be responsible for the food and beverages charges and merchandise purchased at the Golf Course. In addition, the teams shall have free use of the driving range and the practice facilities at the Golf Course..." However, a July 26, 2005 letter from former Athletics Director Tim Weiser to the President of KSUGCMRF indicates that the Athletics Department agreed to the annual \$20,000 per year payment on behalf of the golf teams as the operating budgets of the golf teams could not absorb this cost. The letter further indicates that an "alternative source of funding" was secured to pay this expense and indicates that if that source becomes unavailable, then the Athletics Department's support of the annual \$20,000 payment would end. Mr. Krause indicated that the \$20,000 per year paid by the Athletics Department was to reimburse the Golf Course for the golf teams' use of the locker area and indoor practice facilities. However, the practice facilities appear to be available to the golf teams without charge per the Operating Lease and \$20,000 a year for the use of the locker area could be seen by some as questionable. The Athletics Department, as a "founding member" of the Golf Course, receives four permanent play passes for its general use. Mr. Krause, the current Athletics Director, serves as the Assistant Treasurer of KSUGCMRF and has check approval and signatory authority.

KSUGCMRF also has ties to the University through the College of Agriculture's Turf Management curriculum. The College of Agriculture pays \$40,000 annually for access to the Golf Course for turf management experiments, but receives no playing rights. In addition, the Kansas State Student Union donates \$5,000 annually to support discounted greens fees for KSU students.

### Cash Disbursements

Of the cash disbursements selected for testing, only 60% had a payment request in the form of a formal memo or informal notation, and only 7% had any notation that could be considered an "approval." Copies of checks were attached to only 9% of the cash disbursement packets tested. We noted disbursements paid to Mr. Haney for reimbursement of expenses were not approved. We also noted disbursements for "Cash" totaling \$4,000, but most did not have evidence of approval.

### Bridge Loan Guarantees

The Golf Course was built in 2000 on 315 acres of grazing land purchased by KSUGCMRF from the Vanier family, long-time KSU supporters/donors and in-laws of Mr. Krause. The family retained approximately 700 acres surrounding the golf course site for the Grand Mere Development consisting of luxury residences and commercial properties.

Initial funding for the construction of the Golf Course included \$12 million in specific donations, \$8 million in bonds payable and a \$4.1 million line of credit (the construction “Bridge Loan”). The Bridge Loan was personally guaranteed by six individuals, including Mr. Krause. Within a few years of opening, the Golf Course was financially distressed. In early 2005, KSUGCMRF defaulted on its bonds, resulting in a financial restructuring in June 2005. Negotiations with the indenture trustee and bond guarantor resulted in a \$2 million settlement in payment of the bonds. KSUGCMRF then bought back the Golf Course for \$2 million borrowed from Kansas State Bank. The original Bridge Loan had been paid down to \$1.8 million and was then owned by Columbian Bank & Trust. Effective June 30, 2005, the six personal guarantors executed notes payable to Columbian Bank & Trust individually for one-sixth of the outstanding Bridge Loan and KSUGCMRF’s debt to Columbian Bank & Trust was retired. Three of the guarantors chose to pay off their loans to Columbian Bank & Trust during 2005. The other three guarantors, including Mr. Krause, renegotiated or refinanced their promissory notes to extend the maturity date as much as five years.

Although KSUGCMRF’s debt was retired in full when the guarantors took on their personal obligations, the debt remains on KSUGCMRF’s balance sheet in a line item entitled “Non Recourse Line of Credit.” Five of the guarantors made a lump sum contribution or are making periodic contributions to the KSUGCMRF in the amount of their principal and interest payments due, which KSUGCMRF pays to Kansas State Bank with instructions to forward to the appropriate financial institution to pay down the guarantors’ personal debt. It appears that the transactions are structured in this manner so that the loan payments can be counted by the guarantors as “designated contributions” and therefore be considered tax deductible donations to KSUGCMRF. This is confirmed by an October 18, 2005 email from Mr. Krause to the other guarantors with a copy to Mr. Bernie Haney, Mr. Alan Klug, an individual at Kansas State Bank and a member of the Foundation’s external audit team.

The IRS could potentially view this as an improper transaction as the debt being repaid is the debt of the individual guarantors and not that of KSUGCMRF, yet KSUGCMRF is receipting the payments as tax deductible donations. We spoke with the member of KSUGCMRF’s external audit team copied on the previously referenced email. The auditor indicated that he was aware of the structure of the transaction. He indicated that he had not sought an opinion from any taxing authority regarding the structure, but believed that the payments would be viewed as being made in support of the KSUGCMRF and therefore would be deductible by the guarantors.

Given that Mr. Krause has held various positions within the University and its affiliates during the period in which he has been making payments on his personal guarantee, we analyzed the compensation paid to him or on his behalf by the Foundation, the Athletics Department and the NISTAC Cluster to determine if any of those organizations could be making directly or funding the guarantee payments on his behalf out of accounts under our review. It does not appear that the Foundation, the Athletics Department or the NISTAC Cluster

made payments for Mr. Krause's personal guarantee or on his behalf based on both the timing and the amount of payments made.

### Findings and Recommendations

With regard to cash disbursements, formal payment request forms detailing the business purpose of the request for payment should be completed. In addition, cash disbursements should not be made without the necessary approvals.

The Foundation, as the parent of KSUGCMRF, should consider the manner in which the Bridge Loan and its related guarantees are being reported by KSUGCMRF and paid to and received by KSUGCMRF for debt no longer in the entity's name and determine if the situation warrants further review. KSUGCMRF's financial statements are currently inaccurate as they list as a liability a debt not legally owed by KSUGCMRF. The appearance of a conflict of interest or preferential treatment for the guarantors should be factored into the Foundation's decision.

The relationship between KSUGCMRF, the Golf Course and the Athletics Department should be reviewed and appropriately formalized and documented. Currently, the \$20,000 annual payments by the Athletics Department for the golf teams' use of the locker area and indoor practice facilities do not appear to be required by the Operating Lease with Golf Generations (which post-dates the 2005 letter from former Athletics Director Tim Weiser). The Operating Lease specifically speaks to the free use of the Golf Course, the driving range and the practice facilities at the Golf Course. All transactions between KSUGCMRF, the Golf Course and the Athletics Department should be appropriately formalized and documented.

## Kansas State University Foundation

### Scope

Our work at the Foundation involved interviewing President and Chief Executive Officer Gary Hellebust, Counsel for Gift Planning Bruce Kent and Vice President for Finance and Administration and Chief Financial Officer Alan Klug. We also spoke with Director of Investments Lois Cox and Compliance Officer Christy Scott about specific transactions. We reviewed the Discretionary Funds ledger for the period fiscal year 2003 through the present and selected 517 items for testing. We tested cash disbursement transactions greater than or equal to \$750 if paid to individuals (representing 47.2% of President Wefald's Discretionary Funds and 54.2% of Mr. Krause's Discretionary Funds) and all other cash disbursements in excess or equal to \$1,500 (representing 20.0% of President Wefald's Discretionary Funds and 28.3% of Mr. Krause's Discretionary Funds).

## Overview of Discretionary Funds

An annual Discretionary Fund with an average amount of approximately \$380,000 was made available to President Wefald by the Foundation through an account entitled “University Welfare and Development.” An annual Discretionary Fund with an average amount of \$265,000 was made available to the Vice President for Institutional Advancement (formerly Mr. Krause) by the Foundation through an account entitled “University Recruitment and Public Relations.” The source of funding for these accounts was unrestricted funds at the Foundation. President Wefald has traditionally used the funds for official hospitality, to pay the non-State funded portion of travel expenses, to support University departments that have smaller budgets and for miscellaneous expenses related to his office. Mr. Krause has used his funds for official hospitality, to pay the non-State funded portion of travel expenses and for miscellaneous expenses related to his office. In addition, vehicles for President Wefald, his wife and a member of his staff as well as for Mr. Krause are paid for out of the Discretionary Funds.

Our review of the cash disbursements from the Discretionary Funds found that, in general, appropriate supporting documentation and approvals were present. However, a few transactions were noted in which the purpose of transaction did not appear to be an appropriate use of the Discretionary Funds or was missing. For instance, in September 2003, Discretionary Funds in the amount of \$1,191.00 were used to reimburse Mrs. Wefald for the air fare for Ms. Kerry Wefald to accompany her on a trip to New York for the Friends of the Arts through the Marianna Kistler Beach Museum of Art. The purpose of the trip was not noted in the supporting documentation. Furthermore, no reason for Ms. Kerry Wefald’s attendance was proffered other than that Kerry was an alumna and “very good at meeting people and making them feel welcome.” Assumedly, Kerry Wefald is a relative of President and Mrs. Wefald. The Foundation questioned the appropriateness of the reimbursement as a handwritten note to the Chief Financial Officer approving payment indicated that “The Wefalds have agreed they will make only “support gifts” from the fund in the future, therefore avoiding any misperception that the funds were not utilized correctly.”

Furthermore, the supporting documentation for some transactions, such as various monthly payments made in 2005 and 2006 in the \$700 to \$800 range to RB Enterprises, Inc, carries no explanation at all. The payments appear to be installment payments of some kind, but there is no indication of what is being paid or its business purpose.

Additionally, a few instances of duplicate reimbursement of an expense were noted. It is our understanding that the Foundation requires the submission of the original receipt to assist in protecting against duplicate reimbursements. However, we noted a few instances where a receipt was submitted for an expense and then a short time later, a charge or other account statement with the same expense would be submitted and both would be paid.

An example is the dinner tab at the Manhattan Country Club on October 27, 2006 for the BRI Dedication. On November 2, 2006, Charles Reagan submitted a check request against President Wefald's Discretionary Fund payable to the Manhattan Country Club in the amount of \$4,005.51. The support was the actual itemized dinner tab from the Country Club. The Foundation issued check #101540 on November 9, 2006 to the Manhattan Country Club in the amount of \$4,005.51. On November 6, 2006, Charles Reagan submitted a check request against President Wefald's Discretionary Fund payable to the Manhattan Country Club in the amount of \$4,237.79. The support was a Manhattan Country Club account statement in the name of Susan Peterson-Thomas, a member of President Wefald's staff. The statement included a line item dated October 27, 2006 for "Banquets/Parties" in the amount of \$4,005.51. An electronic copy of the dinner tab from the October 27, 2006 event was attached and matched the previously submitted documentation exactly. The Foundation issued check #101645 on November 13, 2006 to the Manhattan Country Club in the amount of \$4,237.79. Therefore, the Foundation double paid the Manhattan Country Club in this instance. If it has not done so, the Foundation should research these cash disbursement to determine if they were appropriately reimbursed by the Manhattan Country Club or Ms. Peterson-Thomas.

In another instance, on June 25, 2007, Marilyn Land submitted a check request against Mr. Krause's Discretionary Fund payable to Wal-Mart in the amount of \$107.51. The support was the actual June 20, 2007 itemized receipt from Wal-Mart. The receipt indicated that the items were charged against an account. The Foundation issued check #112564 on June 28, 2007 payable to Wal-Mart in the amount of \$107.51. On July 18, 2007, Marilyn Land submitted a check request against Mr. Krause's Discretionary Fund payable to Wal-Mart in the amount of \$107.51. The support was the Wal-Mart account statement in the name of "Vice President for Inst AD." The statement included a line item dated June 20, 2007 in the amount of \$107.51. The Foundation issued check #113660 on August 2, 2007 to Wal-Mart in the amount of \$107.51. Therefore, it appears that Foundation double paid Wal-Mart in this instance. If it has not done so, the Foundation should research these cash disbursements to determine if they were appropriately reimbursed by Wal-Mart.

A final issue relates to the different hats that Mr. Krause wore in support of the University and its related entities and the appropriate payment of his expenses by the various University and University-related entities. On three occasions in 2006 and 2007, Mr. Krause requested reimbursement from his Discretionary Fund totaling \$889.76 for dinners related to NutriJoy, an incubated company of NISTAC in which NISTAC and Mr. Krause personally hold stock. In addition, during this period of time, Mr. Krause was both the Executive Chair of NISTAC and Chairman of the Board of NutriJoy. In fact, Mr. Krause had become a 15% fractional employee of the NISTAC Cluster due to the amount of time he was spending on NISTAC business unrelated to the University. Two of the three dinners directly related to NutriJoy's potential partnership with Coca-Cola. The Foundation should consider a methodology to share expenses with other entities when an individual is representing, in part, interests outside the University.

A related concern is the possibility that requests for reimbursement could be made to more than one entity utilizing copies of the same documentation allowing for the duplicate reimbursement of expenses. All University-related entities should have a policy of only accepting original receipts. Only when original receipts are not available should a charge account statement be accepted, and then only with appropriate consideration and approval.

### Scholarship Deficit

Scholarships are routinely offered to students through the University's Office of Student Financial Aid. We were told that the Office of Student Financial Aid typically offers more in scholarships than it intends to fund, as not all scholarships extended are accepted. The primary sources of the scholarship funds are donations and endowments overseen by the Foundation. Other sources of monies to fund scholarships historically came from the Kansas State University Student Assistance Foundation from the resale of Sallie Mae loans typically in the range of \$600,000 to \$800,000. Supplemental scholarship funds were available to the Vice President for Institutional Advancement's office in the form of Alumni License Plate fees, logo royalties and funds from a Pepsi contract, typically in the range of \$440,000. It is our understanding that the Office of Student Financial Aid and the Kansas State University Student Assistance Foundation were under the direction of the Office of the Vice President for Institutional Advancement, formerly Mr. Krause.

Mr. Krause indicated that the Foundation gives the Office of Student Financial Aid a line of credit with which to fund the individual scholarships. After it has been determined which scholarships will be funded by which endowments or donations, due to various eligibility requirements of some scholarships, the line of credit is reconciled against the various monies available for scholarship use at the Foundation.

Mr. Krause indicated that in 2007 the Scholarship Fund at the Foundation became overdrawn by approximately \$2.4 million. He indicated that the cause was twofold. A much higher than normal scholarship acceptance rate that year, and a recent change in federal regulations which had caused the activities of the Kansas State University Student Assistance Foundation to go dormant, effectively truncating that traditional source of scholarship funding. Per Mr. Krause, this period of time also coincided with a period in which his office ceased to receive the normal "accounting" or "reconciliation" of funds available for scholarships from the Foundation. The Foundation disagrees with Mr. Krause and indicated to us that Mr. Krause had been given the same "accounting" or "reconciliation" of funds available for scholarships that had been provided in the past and that it appeared that scholarships in excess of the amount of available funds were offered with the expectation that the Foundation would somehow fund any shortfall. The Foundation also disagrees that the acceptance rate for scholarships was abnormally high for 2007.

In March 2008, the Foundation informed Mr. Krause of the approximate \$2.4 million shortfall and requested a proposal for repayment. However, Mr. Krause indicated that his office and its reporting departments did

not have sufficient funds to cover the deficit in full. The initial proposal submitted by the Office of the Vice President for Institutional Advancement was to repay the funds over a five to eight year period from the only remaining sources available to it with which to fund scholarships: the Alumni License Plate fees, logo royalties and funds from a Pepsi contract. This proposal was reportedly unacceptable to the Foundation due to the length of time for repayment. A second proposal was to have the Athletics Department pay an additional \$400,000 a year directly to the Foundation. This proposal shortened the repayment period, but was also rejected by the Foundation.

As of June 30, 2008, a negotiated repayment plan was reached. The Office of the Vice President for Institutional Advancement would contribute Alumni License Plate fees, logo royalties and funds from a Pepsi contract in the amount of \$447,000 for fiscal year 2008, \$440,000 for fiscal year 2009, and \$312,000 for fiscal year 2010. Of the \$625,000 in Discretionary Funds annually made available to the Office of the President and the Office of the Vice President for Institutional Advancement from the Foundation, \$400,000 would be applied against the scholarship account deficit in fiscal years 2008, 2009 and 2010. The resulting \$400,000 shortfall in the Discretionary Funds in those years would be funded by the Athletics Department. The Athletics Department would reduce or cease its payment of the Institutional Support Fee to the University's Controller's Office, expected to approximate \$180,000 per year. In addition, the University would transfer \$220,000 per year to the Athletics Department which would then be transferred to the Foundation. Reportedly, the transaction was structured in this manner as the University is prohibited from transferring funds directly to the Foundation. We questioned the Athletics Department's responsibility for involvement in this transaction and were told that as the Athletics Department fell under the purview of Mr. Krause, Mr. Krause elected to solve the issue in this manner and that the Athletics Department clearly did not have any responsibility for the payments. Per President Wefald, this arrangement was negotiated with his knowledge and approval.

## Findings and Recommendations

Disbursements from the Discretionary Funds should strictly adhere to the Foundation's Accounting Policy Manual which requires that every disbursement request provide documentation justifying the business purpose of the expense and how it benefits KSU. The Accounting Policy Manual also states that credit card statements detailing monthly charges are not adequate receipts for documentation purposes. Any disbursement requests not complying with the Accounting Policy Manual should be denied until appropriately amended and supported.

If it has not already done so, the Foundation should research the detailed instances of duplicate reimbursement and ensure that they are appropriately resolved.

In the event an individual requests reimbursement for an event or trip where he or she was clearly representing the University and a party or entity unrelated to the University, the reimbursement should be divided fairly between the University and the other entities deriving benefit from the event or trip.

The amount of funds available for scholarships should be determined and formally communicated to all concerned parties prior to the awarding of scholarships. The entities awarding scholarships should ensure that they do not offer scholarships in excess of the available funding. Appropriate controls may require the submission of scholarship letters to the Foundation prior to their presentation to students.

Given that the Discretionary Funds generally go to activities that benefit the entire University and its related entities, it is unclear why it is appropriate for the Athletics Department to fund any shortfalls caused by the deficit in the scholarship accounts or for any other reason. It would seem that the traditional source of funding, being unrestricted funds at the Foundation, is the most appropriate source of funding. Any amounts transferred by the Athletics Department to the Discretionary Funds at the University should be formally documented to include approval by the appropriate board or committee of the Athletics Department. Furthermore, formal acknowledgement by the University Controller's office regarding the reduction in the Institutional Support Fee to be paid by the Athletics Department should also be documented.

## NISTAC Cluster

### Scope

Our work at the NISTAC Cluster involved interviewing former NISTAC Executive Chair Bob Krause, NISTAC President Kent Glasscock, and NISTAC Vice President of Finance and Chief Financial Officer Vicki Appelhans. We reviewed financial statements and general ledgers for NISTAC, Mid-America Technology Management, Inc., ("MTM") and Manhattan Holdings, LLC ("Holdings") for fiscal years 2003 through 2008. In addition, we reviewed the minutes of the Boards of Directors for each entity for calendar years 2001 through 2008 and the employment contracts and compensation agreements for Messrs. Glasscock and Krause. We tested 22 cash disbursement transactions greater than or equal to \$500 if paid to selected individuals (non-payroll) or for select investments. This represented 99.6%, 42.6% and 100% of the category for NISTAC, MTM and Holdings, respectively. We also tested 105 other cash disbursements (excluding payroll) greater than or equal to \$15,000. This represented 55.1%, 73.9% and 100% of the category for NISTAC, MTM and Holdings, respectively.

### Overview

The NISTAC Cluster consists of the following related entities:

- NISTAC is a 501(c)(3) Educational non-profit organization whose mission is to create and sustain a formal network that will support technology advancement, technology transfer, education and

scientific research nationwide. NISTAC's objective is economic development through facilitating the commercialization of new technologies and the promotion of related research and education.

Development and commercialization focuses on two distinct portfolios of patents: patents donated by corporations (Technology Acquisition, Development and Commercialization or "TADAC"), and patents originating at KSU and provided by the Kansas State University Research Foundation ("KSURF"). NISTAC commercializes both TADAC and KSURF patents and provides administrative services to startup companies licensing TADAC and KSURF patents, as well as laboratory and office space as needed.

- MTM is a for-profit entity and a wholly-owned subsidiary of NISTAC. MTM provides management, human resources and financial services to companies incubated by NISTAC. NISTAC positions (President, CFO etc.) are held by employees leased from MTM.
- Holdings is an investment vehicle that provides seed capital funds for startups being incubated by NISTAC. Holdings is jointly owned by the City of Manhattan, the Foundation and the Kansas Technology Enterprise Corporation ("KTEC")<sup>2</sup> in equal portions.

The University's relationship to NISTAC is through financial support and the donation or transfer of intellectual property to be commercialized through incubated companies. During the period under review, the University and its affiliated entities have paid NISTAC between \$200,000 and \$830,000 per year for NISTAC's role in acquiring, administering and protecting licensed technologies and intellectual property on the University's behalf for research and economic development. In addition, as previously mentioned, the Foundation is a one-third owner in Holdings.

NISTAC is currently assisting several startup companies, some of which are barely more than a shell with an annual Secretary of State filing. Two companies (NanoScale Materials, Inc. and NutriJoy, Inc.) have grown to the point of being self-managed. Two other companies are repositories for groups of related patents rather than multiple startups with single patents.

In addition to investments made by the NISTAC Cluster, companies incubated by NISTAC have access to a network of "Angel Investors" who are regularly given the opportunity to invest in startup companies under NISTAC's management. In particular, it was noted that President Wefald, Mr. Krause and Mr. Krause's wife are investors in companies incubated by NISTAC.

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<sup>2</sup> KTEC is a private/public partnership established by the state of Kansas to promote technology based economic development. KTEC supports strategic research and development at NISTAC and eight other Business Assistance Incubators throughout the state. KTEC also provides support through two state-wide networks. Each site has a specific focus and provides a set of services including everything from shared lab space to access to investment capital for early-stage companies. KTEC supports NISTAC through grants and is also an owner/investor in Holdings. Our work did not involve any analysis of KTEC information or data.

Until his resignation on September 3, 2008, Mr. Krause held various positions within the NISTAC Cluster. Mr. Krause was the University's representative to NISTAC, the Chairman of NISTAC, a board member of MTM , and a member of Holdings' Advisory Board during the period under review. Due to the amount of time he was spending on non-University related NISTAC business, he was appointed Executive Chair of NISTAC and given a 15% fractional employment contract in 2006.<sup>3</sup> His compensation as NISTAC Executive Chair was all placed into a deferred compensation plan and was paid out in January of 2009, subsequent to his resignation from NISTAC, MTM and Holdings. Mr. Krause was eligible for bonuses, both cash and equity in startup companies invested in by NISTAC. However, upon his resignation, Mr. Krause declined to take receipt of any equity awards due him.

### **Conflict of Interest**

A conflict of interest occurs when an individual or organization has an interest that might compromise their objectivity and reliability. A conflict of interest exists *even* if no improper acts result from it, and can create an appearance of impropriety that can undermine confidence in the conflicted individual or organization. Such a conflict exists relative to the NISTAC Cluster as directors of NISTAC and its affiliated entities are permitted to hold stock in and serve as directors/officers of investee companies. This can call into question their decision-making in situations such as that involving NutriJoy as described below.

### ***NutriJoy, Inc.***

NutriJoy was jointly founded by NISTAC and KSURF in 2000 to develop and commercialize nutritional technologies donated to NISTAC by The Procter & Gamble Company and technologies derived separately from research within KSU. NutriJoy's two main brands, Calc-C® and Goodbites™, are based upon the donated technologies. NISTAC and its affiliate companies hold significant ownership in NutriJoy largely via NISTAC's licensing of intellectual property to NutriJoy and the conversion of loans into equity. Under the original terms of the License Agreements between NISTAC and NutriJoy, NISTAC received an annual license maintenance fee and royalties on licensed product sales by either NutriJoy or its sublicensees.

Since 2000, NutriJoy has been supported in part through a network of loans and/or equity investments by NISTAC, MTM, Holdings and KSURF. In addition, NutriJoy has been invested in by Angel Investors, including President Wefald, Mr. Krause, and Mr. Glasscock.<sup>4</sup> Reportedly, Mr. Krause and President Wefald invested in NutriJoy in 2002 purchasing 37,500 and 35,000 shares, respectively, with cash at the \$1 per share stated par value.

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<sup>3</sup> In fiscal year 2007, Mr. Krause was a 15% employee of NISTAC/MTM per his contract with those entities and a 90% employee with the University as Vice President for Institutional Advancement. His total contracted time totaled 105%.

<sup>4</sup> NISTAC declined to identify other "Angel Investors" due to confidentiality concerns. However, it was verbally indicated that only Dr. Wefald and Mr. Krause were the only "Angel Investors" that were employed by the University or any of its affiliates.

Per the License Agreements between NISTAC and NutriJoy, in the event NutriJoy becomes insolvent or otherwise ceases business operations, all technology rights revert back to NISTAC. Given that the value of NutriJoy is largely vested in the intellectual property it controls, such a reversion of the patents could strip NutriJoy of its revenue generating assets, preventing a recovery of cash investments by NutriJoy's stockholders. This became of concern to some of NutriJoy's stockholders in the Spring of 2005. NutriJoy was experiencing cash flow difficulties that threatened its existence while it was pursuing a strategic partnership with a large food or beverage company. One of the transactions being considered at that time was the acquisition of NutriJoy's underlying intellectual property by the strategic partner. Under that scenario, NISTAC alone could agree to sell and assign the underlying patent rights away from NutriJoy, effectively rendering NutriJoy's stock worthless.

Given its cash flow difficulties in 2005, NutriJoy sought to raise additional equity funds to enable it to continue operating and to attempt to complete the transaction with the proposed strategic partner. The Boards of NISTAC and MTM agreed to convert their collective \$200,000 in outstanding loans to NutriJoy to equity investments subject to the contingency of an additional \$200,000 being raised from existing stockholders. Other key stockholders, who had the financial wherewithal to match the investment, made their additional investments contingent upon the receipt of assurances from NISTAC that cash investors in NutriJoy would not be disadvantaged relative to NISTAC in any future realization of capital returns from the technologies licensed to NutriJoy. Therefore, in a Resolution in Lieu of Meeting dated April 21, 2005, the Executive Committee of NISTAC (chaired by Mr. Krause who was also a cash investor in NutriJoy) recommended that "Any future capital, non-royalty financial returns arising from the sale and assignments of intellectual properties, now licensed from NISTAC to NutriJoy, are allocated first to repay cash investments by stockholders if a normal proportional allocation of such returns, according to stockholdings held by each, are insufficient to do so." The Resolution would specifically apply to any transaction within three years of the date of the Resolution.

The recommended allocation of proceeds would postpone any financial returns to NISTAC on its non-cash (received in lieu of licensing fees or royalties) investments in NutriJoy until all cash-based investors had a return of their \$1 per share par value. Allowing the cash investors to receive a return of capital first would allay investors' fears and contribute to NISTAC's stated purpose of promoting investment in the startup companies. The Resolution was presented to and approved by the full NISTAC Board of Directors at their May 17, 2005 meeting. The Executive Committee Resolution does not address whether or not members holding a cash investment in NutriJoy, such as Mr. Krause and Mr. Glasscock, recused themselves from this action. However, the NISTAC Board minutes note that directors who personally supported NutriJoy in executive or financial capacities abstained from voting on the Board's approval of the Resolution.

Further, at the same May 17, 2005 meeting of NISTAC's Board of Directors, the Executive Committee sought approval to make "quick and binding decisions involving a possible sale of intellectual properties and rights held by NISTAC and licensed to NutriJoy." The reasoning behind this request was that NutriJoy was currently engaged in highly confidential and sensitive discussions that could possibly lead to an "urgent need" for NISTAC to make such decisions without sufficient time for Board approval. Reportedly, the then Chairman of NISTAC and NutriJoy, Dr. Ron Sampson, was at odds with the remainder of the NutriJoy Board regarding the possible strategic partnerships. This led to the NISTAC Board creating an "Augmented Executive Committee" apart from the existing Executive Committee, for the purpose of making decisions in the NutriJoy situation only. The members of the "Augmented Executive Committee" were specifically chosen because they had no personal interest or involvement with NutriJoy. Three of the five Executive Committee members, Messrs. Sampson, Krause and Glasscock, had personal interest in NutriJoy through their board position at NutriJoy and/or personal ownership of NutriJoy stock. It appears that the Board was attempting to address the conflict of interest on the Executive Committee by the creation of the "Augmented Executive Committee." However, NutriJoy was not successful in obtaining a significant strategic partnership at that time, and the Augmented Executive Committee was disbanded.

Due to NutriJoy's continued need for cash infusions to support operations, NISTAC's Executive Committee approved an additional investment in NutriJoy in January 2006. In conjunction with that investment and the planned phased retirement of Dr. Sampson from the NISTAC and NutriJoy Boards, NISTAC's Executive Committee "strongly encouraged the NutriJoy Board to invite the Chair of the NISTAC Board, Mr. Krause, to join their Board." Mr. Krause was subsequently appointed Chairman of NutriJoy's Board.

Under Mr. Krause's leadership and with his significant personal involvement, NutriJoy successfully pursued a significant strategic partnership with Coca-Cola. In August 2007, NISTAC's Executive Committee discussed and reaffirmed the April 2005 Resolution that would result in NISTAC not receiving a financial return on its 843,750 NutriJoy shares acquired via licensing or other services in advance of capital recovery of other stockholders. Additionally, the Executive Committee stated NISTAC's willingness to negotiate to eliminate its ongoing royalty requirement in order to facilitate a sale of stock. Messrs. Krause and Glasscock were authorized by the Executive Committee to negotiate with NutriJoy, on behalf of NISTAC, a capitalized future return for eliminating its royalty requirement. It appears from the NISTAC Board minutes that the binding decision with regard to the Coca-Cola transaction was made by the five member Executive Committee, inclusive of Messrs. Krause and Glasscock.

In late January 2008, Coca-Cola acquired a majority interest in NutriJoy. As a result NutriJoy Class A (cash) stockholders received a cash distribution of approximately 68¢ per share accounted for as a return of capital. We were told that under the terms of the NutriJoy Stockholders' Agreement, Class A stockholders must receive \$1.00 for their shares before any distributions are paid to other classes of stockholders. Class A

stockholders receiving cash distributions include, but are not limited to NISTAC, Holdings, KSURF, MTM, the Robert Steven Krause Revocable Trust dated 5/16/03, Kenton L. Glasscock Trust dated 6/1/01, and Jon and Ruth Ann Wefald. NISTAC received a cash distribution of \$375,725.26 on the 550,315 NutriJoy Class A shares, but not on the 843,750 Class B shares it had acquired in relation to the donation of the intellectual property.

In addition to giving up the cash distribution on its Class B shares, NISTAC also gave up on-going compensation due from NutriJoy and its sublicensees under the 2000 License Agreement related to the annual license maintenance fees; all royalty payments due from NutriJoy, its affiliates and sublicensees; and all non-royalty sublicensee payments. Compensation to NISTAC is now addressed in the January 2, 2008 Second Amendment to License Agreement which reads “The parties agree that NISTAC is entitled to certain contingent payments in exchange for the rights granted by it in this Agreement. The contingent payment amounts, if any, are as described in Section 2.4 of the Stockholders Agreement for NutriJoy, Inc. dated of even date herewith and the circumstances under which such payments are due to Licensor from Licensees.”

It should be noted that we requested and were denied access to the NutriJoy Stockholders’ Agreement referred to above. Mr. Glasscock indicated that the referred to payments will be a modest distribution to NISTAC after all Class A stockholders have received a return of \$1 per share, but prior to any distribution to Class B (NISTAC) or Class C (Coca-Cola) stockholders.

The NutriJoy Stockholders’ Agreement may provide further relevant information regarding the Coca-Cola transaction and further description of the rights of the various classes of NutriJoy stock as well as stock awards to officers and directors. Had we been allowed to review this document, it is possible that findings of an adverse nature may have been identified.

### **Wildman Harrold Report**

The NISTAC Cluster was originally established in the 1990s using a model developed by KTEC. In discussions with similarly-structured entities, NISTAC management became concerned that their corporate structure might be incompatible with recent changes to governing regulations and tax laws. In 2005, NISTAC engaged the services of Wildman, Harrold, Allen & Dixon, LLP (“Wildman Harrold”) to make an assessment of the structure of the NISTAC Cluster and its operations and employee compensation policies. On March 6, 2006, Wildman Harrold prepared a report which found that the Boards of Directors and Committees of NISTAC, MTM and Holdings were “too intertwined.” At NISTAC’s August 22, 2006 Board of Directors meeting, several personnel changes were made to the Boards of NISTAC and MTM as well as changes to the NISTAC Executive Committee and Compensation Sub-Committee to address this recommendation. In addition, various findings addressed the manner in which equity compensation was awarded, specifically:

- Grants of equity to employees (by way of the MTM Deferred Compensation Trust, the “MTM Trust”) may violate reasonable compensation rules promulgated by the IRS relating to not-for-profit entities.
- Incentive compensation to employees should be properly allocated. Employees of NISTAC and MTM should only be rewarded for the work they have performed for each entity.
- Up to one-third of all equity compensation of NISTAC and MTM is funded into the MTM Trust but MTM Trust documents list MTM as the sole entity funding the MTM Trust.
- NISTAC royalty/licensing income and incentive equity grants to employees are inversely related. Should NISTAC receive equity for royalty and licensing fees instead of cash, employees may be unjustifiably rewarded at the expense of NISTAC’s profitability.

NISTAC’s Compensation Sub-Committee established a cap of “three times salary” with respect to incentive compensation relating to licensing revenues. With respect to equity compensation, NISTAC is currently working with the law firm of Husch Blackwell Sanders LLP to develop equity compensation rules that are compatible with the recommendations of Wildman Harrold.

### Findings and Recommendations

NISTAC has an established protocol for disclosing conflicts of interest through its bylaws which requires that directors declare their interest and/or engagement with another party or entity in advance to the other directors and abstain from voting on any agreement with the entity in which they have a personal interest. In relation to the Coca-Cola transaction, the April 17, 2007 NISTAC Board minutes indicate that the Board empowered the Executive Committee to take necessary and binding actions in between Board meetings with the understanding that the Executive Committee would give due consideration to maximizing potential long term value for NISTAC while meeting other objectives within its mission. The motion passed unanimously. Mr. Glasscock was a member of the NISTAC Board, President of NISTAC and a shareholder in NutriJoy, yet it was not noted that he abstained from voting. Furthermore, Mr. Krause was Executive Chair of the Board of NISTAC, Chairman of NutriJoy and a shareholder in NutriJoy, yet it was not noted that he abstained from voting. On August 15, 2007 the Executive Committee of the Board met to review the terms of the proposal by Coca-Cola to acquire a controlling interest in NutriJoy. The Executive Committee consisted of Messrs. Krause and Glasscock, both stockholders in NutriJoy, and three other members who reportedly did not own NutriJoy stock. A motion passed unanimously to recommend the Coca-Cola proposal to NutriJoy and affirming that NISTAC was 1) waiving the distribution of any financial return on its shares acquired in lieu of cash until all existing shareholders have recovered their capital investment; and 2) eliminating its royalty requirements in order to facilitate a sale of stock. Furthermore, the Executive Committee authorized Mr. Krause and Mr. Glasscock to negotiate with NutriJoy on behalf of NISTAC a capitalized future return for the elimination of its royalty requirement. Again, Mr. Glasscock was a member

of the NISTAC Board, President of NISTAC and a shareholder in NutriJoy, yet it was not noted that he abstained from voting. Mr. Krause was Executive Chair of the Board of NISTAC, Chairman of NutriJoy and a shareholder in NutriJoy, yet it was not noted that he abstained from voting.

While NISTAC has established a written protocol to address conflicts of interest, it does not appear that the protocol is followed. The possibility for future conflicts of interest such as that arising from the Coca-Cola transaction and the actions of Mr. Krause and other NutriJoy shareholders who were also in a position of influence at NISTAC should be carefully considered by the University and the Foundation. The Foundation may want to consider increasing their oversight through Board and Executive Committee participation to ensure that they are fully informed with regard to NISTAC and its incubated companies' operations.

With regard to the Wildman Harrold report, NISTAC should obtain positive confirmation from Wildman Harrold or Husch Blackwell Sanders LLP that the current composition of its various Boards of Directors, Committees and Sub-Committees and Advisory Boards conforms to the recommendations of the Wildman Harrold report and any subsequent changes in regulation and tax law.

NISTAC should continue working with Husch Blackwell Sanders LLP to revise its compensation policies to ensure compliance with all regulations and tax laws. The resulting recommendations and implementation of those recommendations by the NISTAC Cluster should be reviewed by the University and the Foundation.

## Intercollegiate Athletics Association

### Scope

Our work at the Athletics Department involved interviewing Athletics Director Bob Krause, Associate Director of Athletics for Business Operations Bob Cavello, and Assistant Business Manager Kim Linck. We reviewed the minutes of the Intercollegiate Athletics Council for fiscal years 2001 through 2008 and reviewed employment contracts, and related documents for various coaches and Athletics Directors. We also reviewed the general ledgers for fiscal years 2003 through 2009 year-to-date and selected 500 items for cash disbursements testing. We tested cash disbursement transactions greater than or equal to \$5,000 if paid to individuals, not including payroll (representing 90.4% of the category), payments to KSU Aviation greater than or equal to \$3,500 (representing 60.3% of the category), payments to KSUGCMRF greater than or equal to \$10,000 (representing 68.4% of the category) and miscellaneous payments equal to or in excess of \$50,000 (representing 32.4% of the category).

Not all information requested by Grant Thornton was available for our inspection. Specifically, we did not receive supporting documentation for 13 selected disbursements by the Athletics Department as well as the original July 2, 2001 employment contract and 2005 BMA Annuity documentation for former Athletics Director Tim Weiser. Mr. Bob Cavello, Associate Director of Athletics, indicated that the supporting documentation for the 13 selected disbursements, representing \$845,000, could not be located or was no

longer available due to normal record retention practices. The payees in question included former Athletics Director Tim Weiser, former Head Football Coach Bill Snyder, and former Vice President for Institutional Advancement and Athletics Director Bob Krause, among others. Therefore, we were unable to determine if these transactions were for a legitimate business purpose and were appropriately documented and approved.

Mr. Cavello originally indicated that the Athletics Department did not have a copy of Mr. Weiser's original 2001 contract nor the documentation supporting the Athletics Department's 2005 purchase of an annuity to fund the matching of Mr. Weiser's deferred compensation account. Mr. Cavello indicated that he requested these documents from Mr. Weiser's advisors, but they did not become available during our engagement.

Subsequently, we were told that Mr. Krause indicated that there was no original July 2, 2001 contract for Mr. Weiser although one is specifically referred to by date in the "Third Addendum to Contract for Tim Weiser." We have identified possible tax issues related to Mr. Weiser's employment contracts and various payments made to him there under which are discussed later in this report.

## Overview

The Athletics Department is organized as a 501(c)(3) educational non-profit organization and is a separate legal entity from the University. Its day-to-day operations fall under the responsibility of the Athletics Director.

The Intercollegiate Athletics Council ("Advisory Council") serves in an advisory capacity to the Athletics Director. Voting members of the Advisory Council are comprised of two alumni members, two student members, two faculty-at-large members, one faculty representative to the NCAA, the Big 12 Conference and any other conferences in which the University may affiliate, one alternate faculty representative and the Chairperson. The Athletics Director and the Alumni Board and Foundation Board liaisons are non-voting members. The Advisory Council is largely limited to the discussion of budgetary matters, use of facilities, promotional activities, equal opportunity for all athletics, academic progress of athletes and personal conduct of athletes and employees of the Athletics Department. The Advisory Council does not function as a standard board of directors and in reality appears to provide little in the way of "checks and balances" with regard to the operations of the Athletics Department.

The Athletics Directors have historically reported to President Wefald through Mr. Krause as Mr. Krause was given responsibility for implementing the Memorandum of Understanding between the Athletics Department and the University by coordinating the daily activities and interests of the University with those of the Athletics Department. Therefore, Mr. Krause, with President Wefald's approval, has always been significantly involved in negotiating coaches' and Athletics Directors' contracts, and was very involved in the financial affairs, fundraising efforts and strategic direction of the Athletics Department.

However, under Mr. Krause some processes within the Athletics Department have not always been appropriately structured and formalized. Furthermore, transactions involving other University-related entities have not always been appropriately structured and transparent given that the Athletics Department is a separate legal entity. Examples of such instances are detailed below.

### **Imprest Account**

Most of the operating funds for the Athletics Department are kept in a bank account (“Bank 14”) maintained by the University Controller’s office. The Business Office of the Athletics Department submits check requests to be processed by the University Controller’s office and, except for disbursements from state funds or greater than \$75,000, the University Controller’s office does not review the requests or any supporting documentation.

In addition to the Bank 14 account, the Athletics Department maintains and controls an Imprest Account at a local bank from which it can make disbursements without having to go through the Controller’s office. Funding for the Imprest Account comes from disbursements out of the Bank 14 account. While the University Controller’s office can monitor the amount of money flowing through the Imprest Account, they do not have the opportunity to review or monitor any payments being made from that account.

Per Mr. Cavello, the purpose of the Imprest Account was to provide funds in cases where payment was needed sooner than the 10 day processing period for payments going through the Bank 14 account. He indicated that payments through the Imprest Account (also known as the “Contingency Fund”) were for staff and team travel. Our analysis has shown that approximately \$1,400,000 in annual disbursements flowed through the Imprest Account during Fiscal Years 2003 through 2005 and approximately \$2,000,000 in annual disbursements during Fiscal Years 2006 through 2008.

While approximately 95% of these disbursements were for travel-related payments and reimbursements, we found a number of contract payments to the personal corporations of Mr. Weiser, Mr. Snyder and Mr. Krause for compensation in excess of their base salary. The majority of such payments were made through the Bank 14 account maintained by the University Controller’s office. It is not clear why contract payments would be made through the Imprest Account as they do not relate to travel. As with other payments to employees’ personal corporations, the supporting documentation was minimal, usually consisting of an email from Mr. Cavello to Ms. Christy Scott directing that a payment be made. We obtained a file memo dated July 28, 2005 from Ms. Christy Scott which memorialized one such payment to Mr. Weiser’s personal corporation and stated “For confidentiality reasons, the check will be written from the Imprest account...” Our analysis of Mr. Weiser’s compensation showed that the amount paid represented payments due him under his 2005 contract and it is unclear why this particular payment required confidentiality, or from whom.

With the exception of one payment, all the payments were under the \$75,000 review benchmark for the Controller's office. However, a payment of \$121,726.25 was made to Mr. Weiser's personal corporation from the Imprest Account. On December 14, 2006, Mr. Weiser emailed Mr. Cavello and Ms Scott and asked for a check payable to Weiser Way on January 1, 2007 consisting of the remainder of his "additional compensation" (compensation in excess of base salary as described below). Mr. Weiser indicated in the email that he had some taxes to pay by December 31, 2006 that he needed to cover with the remaining additional compensation, but that he did not want that income to be considered as received in 2006. A handwritten note on the email indicates that the Controller's office could not prepare a check dated January 1, 2007, so the fund were transferred from the Bank 14 account to the Imprest Account on December 14, 2006 and a manual check dated January 1, 2007 was issued out of the Imprest Account in the amount of \$121,726.25.

It is recommended that the use of the Imprest Account be limited to its stated intent of travel-related expenses and reimbursements. We have been told that all future related to compensation will be made through the University's payroll system.

### **Institutional Support Fee**

Although the Athletics Department is a separate legal entity, it utilizes various back-office functions of the University's Controller's Office such as bookkeeping and check writing services. The Athletics Department has historically paid the Controller's Office a fee for these services through an Institutional Support Fee, which approximates 2.25% of gross receipts excluding student fees and University interdepartmental sales. The fee owed the Controller's Office is traditionally paid by the Athletics Department to the University in June of every year. During the period under analysis, fees paid to the Controller's Office averaged \$195,000 per year.

However, on June 6, 2008, the Athletics Department transferred \$80,000 to the Foundation to augment the Discretionary Funds of President Wefald (\$54,400) and Mr. Krause (\$25,600). The source of these funds was \$80,000 of the \$180,000 Institutional Support Fee due the University Controller. Per discussions with Foundation personnel, we were told that disbursements from the Discretionary Funds had not been subject to any formal budget, but generally averaged \$650,000 for the two accounts. It is our understanding that the \$80,000 transfer was predicated by the perceived need for additional Discretionary Funds by President Wefald and Mr. Krause above and beyond the amount provided by the Foundation for fiscal year 2008, and not because of any obligation on the part of the Athletics Department. We were told that Mr. Krause requested the transfer of funds from the Athletics Department as those funds were under his area of responsibility. We were not provided documentation indicating that this transfer was approved by any board or committee of the Athletics Department nor by the University Controller's Office. However, we were told that Mr. Bruce Shubert, the Vice President of Administration and Finance of the University, to whom the Controller reports, verbally approved the transaction. Mr. Shubert indicated that "from time to time, the

Institutional Support Fee is adjusted for selected departments based on either University or departmental circumstances – those adjustments are not always reduced to writing.”

Furthermore, the Athletics Department participation in resolving the scholarship deficit at the Foundation by transferring the Institutional Support Fee due the University for the next three years to the Discretionary Funds at the Foundation has already been detailed in this report.

### **Potential Tax Issues**

In reviewing various contract documentation and payments made by the Athletics Department to coaches and other individuals, we encountered a variety of possible tax issues. The potential issues are detailed below.

#### ***Employee or Independent Contractor***

Our analysis of compensation paid through the Athletics Department revealed that over the period analyzed, Mr. Krause, Mr. Weiser, Mr. Wooldridge and Mr. Snyder all received salaries, which were recorded on W-2 forms. However, those individuals also received additional compensation in the form of “consulting fees,” “contract pay,” “professional fees” or “overload contracts.” In many instances, this additional compensation was not paid to the individual through the University payroll system, but rather to a private corporation or limited liability company set up by the individual. For instance, Mr. Weiser received his additional compensation through an entity named “The Weiser Way.” Mr. Wooldridge received his additional compensation through an entity named “Pershing.” Mr. Snyder received his additional compensation through an entity named “SSM, Inc.” and Mr. Krause, at times, received his through an entity named “Horizon Ranch.” The additional compensation for Messrs. Weiser, Wooldridge, Snyder and Krause was not run through the University’s payroll system. It was instead expensed through the Athletics Department’s “Contract Pay” or “Miscellaneous Expense” accounts. We were told that this was the long standing practice of the Athletics Department and was done in part because the additional compensation may not have been funded by State funds and in part to provide confidentiality for the individuals receiving the additional compensation. With the exception of Mr. Krause, as described below, it appears that all described compensation would be directly related to the individual’s performance of their duties as coaches of a University athletics team. It does not appear that any of the compensation would be due the coaches for “consulting services” unrelated to their roles as coach.

The Athletics Department acquires payroll services for its employees through the University Controller. Therefore, all Athletics Department payroll is run through the University’s payroll system. According to the University Controller, University employees’ taxable income is now reported to the IRS though the W-2 form. However, historically, there have been individuals that received consulting fees or other forms of compensation that did not run through the University’s payroll system. If the payment did not run through the University’s payroll system, no withholdings were deducted from the compensation.

If consulting fees were paid to an individual, who was not an employee, the University filed an IRS Form 1099. However, if the consulting fees were paid to a corporation, such as SSM, Inc., The Weiser Way, or Horizon Ranch, LLC the University did not have an IRS reporting requirement, and the reporting of that income to the taxing authorities was the responsibility of the recipient.

In reviewing Coach Bill Snyder's contract dated June 18, 2001, it was noted that compensation was outlined in a variety of ways including: annual salary (base salary), other duties (e.g., television shows, appearances, endorsements) and performance bonuses. Coach Snyder's base salary was paid through the University payroll system and was subject to appropriate payroll deductions. The remainder, a majority of total compensation, was paid outside of the payroll system primarily to Coach Snyder's corporation, SSM, Inc., and was not subject to payroll deductions. The following fringe benefits were also noted: country club membership, founder privilege at Colbert Hills, the use of football facilities for football camps, football suite as long as he lives in the Manhattan, Kansas area, home football game tickets, home basketball game tickets, two courtesy vehicles, undergraduate education expenses for his daughters, and a guaranteed 5-year contract extension as Associate Athletics Director for his son after Coach Snyder's departure.

In addition to the June 18, 2001 contract with Mr. Snyder, the Athletics Department located a November 13, 1996 contract between Mr. Snyder's personal corporation, SSM, Inc., and the Athletics Department. That contract appears to address many of the same issues addressed in the June 18, 2001 contract and may be considered to have been usurped or amended by the June 18, 2001 contract. It is difficult to see how Mr. Snyder could be defined to be an employee of the Athletics Department under the 2001 contract and an employee of SSM, Inc. under the 1996 contract simultaneously for appearing to provide the same services under both contracts.

In reviewing former Athletics Director Tim Weiser's contract documents and addendums, it was noted that compensation was outlined in a variety of ways including: base salary and annual longevity award/bonus. Mr. Weiser's base salary was paid through the University's payroll system and was subject to payroll deductions. The remainder, a majority of total compensation, was paid outside of the payroll system primarily to Mr. Weiser's corporation, The Weiser Way, and was not subject to payroll deductions. The following fringe benefits were also noted: country club membership, founder privilege at Colbert Hills, two courtesy vehicles, clothing allowance and vacation expenses.

Generally, the employer must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. The employer generally does not have to withhold or pay any taxes on payments to independent contractors. Further, any fringe benefits provided are taxable and must be included in the recipient's pay unless tax law specifically excludes it.

Considering the terms of the contracts above, it is possible the IRS would not view Coach Snyder or Mr. Weiser as independent contractors in part, rather than employees in whole, for tax purposes. Many universities do pay their coaches for appearances and endorsements through a contract with the coach's personal corporation. However, it is our understanding that the taxing authorities do not look favorably on those situations if it is the Athletics Department or the University who is arranging for/negotiating the appearances and the endorsements on behalf of the coach, such as is the situation at KSU. If the Athletics Department classifies an employee as an independent contractor and does not have a reasonable basis for doing so, it may be held liable for employment taxes for that employee. Further, at the time of this analysis, documentation had not been provided to determine how fringe benefits received by Coach Snyder or Mr. Weiser were being reported for tax purposes.

This issue of employee or independent contractor was reportedly raised by the Athletics Department's external auditors in 2005 and resulted in a change going forward for contracts for newly hired coaches. However, it does not appear that changes were made to the manner in which already established compensation arrangements, such as for Coach Snyder and Mr. Weiser, were accounted for. Moving forward it is understood that all employees have total compensation accounted for through the payroll system subject to the proper payroll deductions. However, it is recommended that the Athletics Department and University conduct a thorough review to identify all possible independent subcontractor and fringe benefit arrangements. To the extent such arrangements exist, they should be reviewed by an independent, qualified third-party to ensure that they comply with the applicable tax laws.

#### *Overload Contract*

According to President Wefald, Mr. Krause has long been involved in the University's Athletics Department, in effect serving as President Wefald's liaison to the department. Since 1986, Mr. Krause has served as the Interim Athletics Director on four occasions prior to his full-time appointment. On average, Mr. Krause has devoted in excess of 20 hours of his often 80 hour work week to Athletics Department activities. In recognition of the amount of time Mr. Krause was devoting to the Athletics Department, in excess of his normal responsibilities as Vice President for Institutional Advancement, President Wefald approved an "Overload Contract" for Mr. Krause beginning in 2003. The Overload Contract was documented in the form of an addendum to Mr. Krause's contract as Vice President for Institutional Advancement.

Mr. Krause was eligible for and received compensation equal to 25% of his salary as Vice President for Institutional Advancement from the Athletics Department. However, as discussed previously, the payments for the "Overload Contract" were not run through the University's payroll system, but rather through the Athletics Department's Miscellaneous Expense account. Some of the payments were made in the name of "Horizon Ranch" and did not appear to be subject to any withholdings. Although Mr. Krause was not an employee of the Athletics Department at the time these payments were made, they should still be reviewed

from a tax perspective to ensure that they were handled appropriately. As the Athletics Department reported to the University through Mr. Krause, the payments could be viewed by the taxing authorities as payments due to Mr. Krause as an employee of the University.

### *Informal Deferred Compensation Arrangement*

Through testing, it was observed that Coach Snyder may have had an informal deferred compensation arrangement as a matter of course from at least fiscal year 2002 and continuing beyond Coach Snyder's departure from the KSU football program in November 2005. The June 18, 2001 contract between Coach Snyder and the Athletics Department stated that the described "annual compensation will be distributed periodically to the employee or SSM, Inc. as mutually determined by the University and the employee." At some point in time, the aforementioned section of the contract was amended by the striking of the phrase "to the employee or" so that the annual compensation for Mr. Snyder is directed to be paid to SSM, Inc. This amendment is not dated and bears the hand written initials RSK, assumedly Robert S. Krause. Coach Snyder's base salary was paid through the University's payroll system and was subject to payroll deductions. However, as previously discussed, the remainder, a majority of total compensation, was paid outside of the payroll system primarily to Coach Snyder's corporation, SSM, Inc.

The amount and timing of the payments to SSM, Inc. appear to have been determined by Coach Snyder. Rather than paying all compensation owed Coach Snyder in the year it was earned, or formally deferring that compensation, the Athletics Department kept track of the additional compensation owed to Coach Snyder in an Excel spreadsheet and paid it to Coach Snyder upon his request. This often resulted in compensation earned in a particular year not being paid out for several years. Mr. Cavello confirmed that as of December 31, 2008 Coach Snyder was still owed nearly \$900,000 in outstanding compensation by the Athletics Department which was earned in fiscal years 2005 and 2006.

New regulations governing nonqualified deferred compensation plans went into effect on January 1, 2009. The regulation provides that all amounts deferred under a deferred compensation arrangement must be included in gross income if the arrangement is not in compliance with the rules under Internal Revenue Code ("IRC") § 409A. Failure to comply could subject the Athletics Department to penalties and interest.

It is recommended the Athletics Department and University conduct a thorough review to identify all possible deferral arrangements, qualified and unqualified. To the extent such arrangements exist, an independent, qualified third-party should be hired to analyze the agreements and their accounting to ensure compliance with IRC § 409A both in operation and form, and all other applicable laws.

### *BMA Annuity for Tim Weiser*

Pursuant to the "Fourth Addendum to Contract for Tim Weiser," dated March 31, 2005, the Athletics Department agreed to take on "additional responsibilities" with regard to the 2002 Deferred Compensation

Agreement with Mr. Weiser. The Athletics Department agreed to match all previous and future deferred compensation and interest thereon under the Deferred Compensation Agreement up to a maximum amount of \$1 million. To fund this future obligation, the Athletics Department purchased a BMA Annuity with an initial funding of \$400,000.

Supporting documentation attached to a cash transaction we tested indicated that the amounts due Mr. Weiser under the BMA Annuity contract would only be paid to Mr. Weiser upon his termination of employment and would be subject to all applicable employment taxes at that time. Mr. Weiser left the Athletics Department on June 14, 2008 and received his settlement payout on July 14, 2008. The supporting documentation for the amounts paid to Mr. Weiser upon his leaving the Athletics Department does not indicate that applicable employment taxes were withheld. Furthermore, the payment was made to The Weiser Way and not through the University's payroll system. As discussed previously, it was not the Athletics Department practice to withhold taxes unless payments were made through the University's payroll system. Payments made to Mr. Weiser upon his leaving the Athletics Department should be reviewed from a tax perspective to ensure that it adheres to all applicable tax laws and regulations.

#### **Loan to Tim Weiser**

On January 3, 2008, Mr. Krause, as the Vice President for Institutional Advancement and the sole member of the Athletic Director Compensation Committee, approved a loan agreement and promissory note between the Athletics Department and Mr. Weiser resulting in a loan of \$500,000 to Mr. Weiser funded January 6, 2008. The loan agreement indicated that "The Borrower shall not be required to justify or explain the purpose of any Loan. The Loan(s) shall automatically be approved by the Lender upon Borrower's written request to the Lender." These are not standard clauses in even the most informal of lending agreements.

The loan plus interest was due at the earliest date that Mr. Weiser was no longer the KSU Athletics Director. The loan was repaid on July 14, 2008 from funds the Athletics Department owed Mr. Weiser from the Borrower's Matching Dollar Account (funded by the BMA Annuity) under Mr. Weiser's Separation Agreement.

This is reportedly the sole instance of the Athletics Department making a loan to an employee. We found no evidence that this transaction was discussed with or approved by anyone other than Mr. Krause. Documentation reviewed indicates that Mr. Krause was aware of Mr. Weiser's impending resignation when he approved the loan. Therefore, risk of repayment did not appear to be a consideration. However, we question the appropriateness of the Athletics Department serving as a lending entity to any individual. One would expect that the lending of monies in this magnitude would be strictly formalized by the Athletics Department, if it was allowed at all.

### **Bill Snyder's Founder's Membership at Colbert Hills**

Although not noted in the 2001 and more recent contract documents we reviewed for Mr. Snyder, a review of the Athletics Department general ledger revealed that the Athletics Department was paying for a \$100,000 Founder's membership at Colbert Hills on behalf of Mr. Snyder. Payments of \$12,500 were paid to KSUGCMRF periodically and posted against accrued payroll for Mr. Snyder. The last such payment was dated February 25, 2004.

On March 30, 2005, a \$12,500 payment was made to SSM, Inc., for "SVC PROVIDED-COLBERT." Reportedly, in late 2007 or early 2008, KSUGCMRF notified Mr. Snyder that his last payment due of \$12,500 had never been received. Mr. Snyder indicated that he had made all payments due. Therefore, Mr. Krause authorized the payment of \$12,500 from the Athletics Department on behalf of Mr. Snyder and had the payment charged to "Miscellaneous Expense" rather than run through "Accrued Payroll expense."

It appears that the 2008 payment may represent a double payment by the Athletics Department of the last payment due KSUGCMRF on behalf of Mr. Snyder. The accounting documentation indicates that the March 30, 2005 payment of \$12,500 that went to SSM, Inc., may have been due KSUGCMRF. The Athletics Department should research this transaction to determine the appropriateness of the 2008 payment to KSUGCMRF.

### **Bill Snyder's Current Contract**

We requested Mr. Snyder's contract documents related to his current position as Head Football Coach. Initially we were given an "Initial Appointment Term" document which noted only his base salary. When we requested the contracting documents related to his entire compensation package, we were told they were still being negotiated, some three months after he accepted the position, and were not available for review. We then received a "Revised Initial Term Appointment" document which noted his salary at the \$1.85 million widely reported in the press.

As noted above, previously Mr. Snyder's compensation was split with his base salary running through the University's payroll system and the remainder being paid to his personal corporation without any withholdings. We strongly urge the Athletics Department to have the current contract and compensation documents put through a financial as well as legal review to make sure that the Athletics Department is in compliance with all appropriate accounting and tax laws with regard to the payment of Mr. Snyder's compensation.

### **Findings and Recommendations**

Contract negotiations and compensation matters within the Athletics Department should be subjected to legal and financial reviews. We were told that historically not all compensation matters were subjected to a legal or financial review which should have addressed the areas of concern noted above. Reportedly, all final

contracts are now reviewed by the University's General Counsel's Office. However, financial reviews are more apt to occur during the external audit process. We would recommend that all contract and compensation matters be subject to an initial financial review which should specifically address any tax concerns. In addition, contracts should be reviewed on a periodic basis to ensure that changes in accounting standards or tax laws are appropriately applied.

All transactions between the Athletics Department and the University or any University related entity should be formalized with regard to structure, accountability and transparency. Formal, documented approval processes should be instituted to ensure that all transactions are appropriately vetted prior to being recorded.

## **CONCLUSION**

The University has benefitted greatly from the leadership of President Wefald and the efforts of Mr. Krause. Both gentlemen exhibit an obvious passion for KSU. However, the concentration of influence under Mr. Krause has resulted in an informality with regard to how the University and some of its related entities interact and transact. This has raised suspicions among the interested parties with regard to the intent behind various transactions that we researched and which are detailed in our report.

In general, the Office of the President should be mindful that although Kansas State University is affiliated with several entities with a common goal, the support and advancement of the University, many of these affiliated entities are separate legal entities unto themselves. As such, each entity should conduct its activities and pursue its mission cognizant of the need for clear lines of delineation which require a degree of structure, formality and transparency.

Furthermore, the reporting structure supporting the Office of the President should be robust and diverse enough to allow for the identification and disclosure of potential conflicts of interest so that they can be appropriately managed.