

**MEMORANDUM**  
**NATIONAL INSTITUTE FOR STRATEGIC TECHNOLOGY**  
**ACQUISITION AND COMMERCIALIZATION (NISTAC)**

20 March 2009

**From:** Ron Sampson, Secretary

**To:** Kent Glasscock, President and Chief Executive Officer

**Copy to:** Ron Trewyn, Chair, Board of Directors

**Subject:** Review of Structure & Governance for NISTAC & Affiliates

This provides a historical and factual review of the organizational structure and governance procedures for NISTAC and its two affiliated companies, Mid-America Technology Management, Inc. (MTM) and Manhattan Holdings, LLC (MHL). The purpose is to document some institutional memory and perspective in a convenient summary form. The information also might be helpful in address any questions that might arise regarding the basis for, and complexity of our corporate structure.

**Overview:** NISTAC and its affiliates were organized in the mid-1990s under the auspices of an agency of the State of Kansas, and since that time subjected to extensive legal and regulatory scrutiny. NISTAC's performance and the outcomes of successive reviews suggest its structure and processes still stand as a national model for adoption by other institutions. Transparency, accountability and mission-effectiveness are seen by others as hallmarks of this structure, albeit one that is not unique to NISTAC. Of particular note was the early benchmark publication in 1998 of the "Kansas Commercialization Corporations" by the State Science & Technology Institute, based in Columbus, Ohio. That publication promulgated the multi-company structure utilized by NISTAC (named MACC at the time) for consideration by other state agencies and research institutions. A copy of that publication is attached for convenient reference.

**Background:** Originally named the Mid-America Commercialization Corporation (MACC), NISTAC was incorporated and organized in 1994 under the auspices of the State of Kansas via the Kansas Technology Enterprise Corporation (KTEC). KTEC of course is an agency of the state government with a direct reporting relationship to both the Kansas legislature and the Governor. Notably, the original establishment of NISTAC was done in the framework of an extraordinary partnership between government at two levels, academe and the business community, specifically with Kansas State University, the City of Manhattan, Kansas, and the Manhattan Chamber of Commerce.

KTEC's initiative was based upon: (a) extensive research of organizational models existing at that time, (b) consideration of the scope of the task to be done, and (c) advice of legal counsel for KTEC. The objective was to create a structure that would strengthen the Kansas economy through the commercialization of new technologies, particularly those arising from research in publicly supported institutions. When formed under KTEC's initiative, NISTAC was one of three Kansas Innovation and Commercialization Companies (ICCs), and each was affiliated with one of the three primary research universities in the State.

Along with the other ICCs, NISTAC was structured as a not-for-profit 501(c)3 corporation and, following a multi-year review, the Internal Revenue Service confirmed that classification for NISTAC (then named MACC) in 1998. This was important in part because a 501(c)3 corporation can receive donations for which a tax deduction may be claimed by the donor.

NISTAC's original and continuing mission is to create and sustain a formal network that will support technology advancement, technology transfer, education and scientific research. Under this mission, NISTAC was empowered to help strengthen the regional Kansas economy by facilitating:

- (a) Technology transfer from and to regional academic institutions, particularly K-State;
- (b) The start-up and expansion of technology-based, high growth enterprises, particularly those based upon technologies licensed from K-State and other regional institutions, including NISTAC itself; and
- (c) The development of a supportive infrastructure, which encompassed the:
  - Provision of incubation facilities for new technology-based business ventures --through a partnership with the university and local government;
  - Improvement of regional access to risk investment capital -- through creation of an early stage investment fund and an angel investor network; and
  - Enhancement of relevant people-skills through experience-based, educational programs in the fields of technology entrepreneurship and management -- in part through the conduct of a student intern program wherein students gain business and entrepreneurial experience as an enhancement of their academic degree programs.

The initial corporate organization designed by KTEC encompassed a structure of two affiliated for-profit companies around the core 501(c)3 not-for-profit company. In NISTAC's case, the affiliates were (and remain): Mid-America Technology Management, Inc. (MTM), a management services company and wholly owned subsidiary of NISTAC, and Manhattan Holdings, LLC (MHL), a seed investment fund organized as a Kansas limited liability company and managed by MTM.

MTM was created to deliver the full range of both not-for-profit and for-profit management services that are needed by NISTAC itself and its client companies, particularly regional startup ventures. Accordingly, under a contract with NISTAC which is overseen by the Boards of both companies, MTM is the actual employer of all full-time NISTAC staff, who serve NISTAC as "leased employees." Only student interns and certain other part-time associates remain on the NISTAC payroll, with the services provided by MTM traditionally including:

- Technology Transfer, that is, marketing and licensing of technologies, particularly those derived from university research as well as those acquired by NISTAC from other sources, as described below;
- New company creation, that is, the organization and administration of start-up companies, including matters of incorporation, governance structure, financial management and operations;
- Market research;
- Business and strategic planning;

- Intellectual property management, including definition of patenting and other protection strategies;
- Business and technology valuations;
- Procurement of financing;
- Proposal preparation for federal and state contracts, particularly those related to the federal Small Business Innovative Research (SBIR) program;
- Operational management on an interim basis, including "hands-on" service by MTM staff as officers and directors of the start-up companies -- until each company can afford and attract the full-time dedicated management staff it needs; and
- Financial, accounting and human resource services, including management of payroll, accounts receivable and payable, budget planning and tracking, and provision of employee benefit programs otherwise unaffordable to startup or small companies.

Notably, NISTAC provides its technology licensing and transfer services for KSU via a partnership agreement with the KSU Research Foundation, which holds the patents and certain other intellectual properties of the University.

MHL operates an early stage or "seed" capital fund, which primarily invests in local startup or emerging, technology-based enterprises with high growth potential. Representing the interest's of NISTAC's three principal sponsors, the investors in MHL are: KTEC Holdings, Inc.; the City of Manhattan; and the Kansas State University Foundation (KSUF). Each institutional investor initially made a matching investment of \$600,000 to create a \$1.8 million fund to address regional needs. Investments made by MHL are usually in the form of equity instruments, and each investment decision is made by an Investment Committee, which is comprised of representatives from each institutional investor. Investment decisions are based upon recommendations of the Fund Manager (i.e., MTM), which is a non-voting member of the Committee. Each of the three institutional investors in that fund received an early cash distribution of nearly \$140,000 from an early harvest of an investment. The ultimate goal is to generate financial returns to the institutional investors that are much greater than their initial investments. If realized, such returns could provide a future source of funds for reinvestment in other programs.

As suggested above, NISTAC and MTM together facilitate access to financing for regional startup and other small businesses through a variety of means. Along with its counterpart regional funds, such as KTEC Holdings, MHL represents an earliest stage investor, which provides money to "seed" the start of development and procurement of additional funds by a new venture. Notably, investments by MHL frequently have attracted parallel investments from other regional funds around the State of Kansas into the Manhattan region.

Since 1995, NISTAC has operated a technology-business incubator facility on behalf of the City of Manhattan and other sponsors. Based upon success in achieving objectives and meeting expectations of the City and other sponsors, this relationship grew through the years and now is embodied in a new City-owned technology business incubator facility located within the K-State Research Park. The manager of the incubator on behalf of the City, NISTAC relocated into the new facility in 2007.

The name of MACC was changed to the current name with the acronym, NISTAC, in 2004. Although MACC's fundamental mission did not change, the name change did reflect an

extension of its geographical reach, as well as the implementation of a strategy to acquire technologies to supplement those resulting from university research. Such additional technologies usually were acquired via donations from corporate donors and used to: (a) enhance certain university research programs, (b) underpin the creation of new regional startup companies, (c) enhance the growth of existing small technology-based companies, and (d) generate royalty revenue streams to help sustain NISTAC's operations, as well as to provide financial returns to its three institutional sponsors, KTEC, KSU and the City of Manhattan. A significant distribution from this program was first made to those sponsors in 2007.

It should be noted that during the 2002-4 period, NISTAC and its operations received much national visibility and scrutiny arising from its program to acquire patented technologies via donations from corporations. That program was known as TADAC (Technology Acquisition, Development and Commercialization), and NISTAC acquired the largest portfolio of donated patents of any institution in history. Because such donations resulted in tax deductions for the donors, the subject became the focus of investigations and analyses related to possible tax abuse. This led to extensive engagement between NISTAC and senior officials within the Department of the Treasury, the Internal Revenue Service, and Congress, particularly within the Senate Finance Committee. NISTAC was viewed as a national leader for the conduct of a transparent, professional program for donees, and invited to present papers on the subject in 2004 at roundtable discussions convened by each the Senate Finance Committee and separately, the U.S. Patents and Trademarks Office. NISTAC also was called to testify under oath during audits of certain company technology donations. Importantly, during these discussions, all of NISTAC's structures and operations, not just the TADAC program, were subjected to scrutiny.

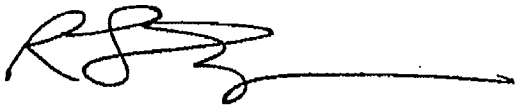
Overall, the results of this prolonged engagement were quite positive for NISTAC, and many in government were complementary of the organization and what we were trying to do. Statements were made by senior Congressional staffers, and even senior officials in the Department of the Treasury, that NISTAC was an exemplary model for donees. In their words: "NISTAC was not a target, but abuses, that would make our hair curl if they could disclose them to us, required a response. Unfortunately, NISTAC would suffer collateral damage because they did not know how to avoid that." The collateral damage would be due to the loss of tax incentives for corporations to make such donations, and legislation to essentially remove tax deductibility for such donations was enacted later in 2004. In spite of this loss of access to potentially valuable, but unused corporate technologies, NISTAC realized value from the investigative process because the outcome provided another basis for confidence that the fundamental structures and processes utilized by NISTAC were sound in the view of key governmental and regulatory officials.

An extensive legal review of the structures and operations of NISTAC and its affiliated companies, MTM and MHL, was conducted in 2005-6 by Wildman Harrold, a Chicago-based national law firm with particular expertise in not-for-profit governance. The purpose of the review was to help ensure that the structure, policies and procedures used by NISTAC constituted "best practices" particularly in view of any regulatory changes since the creation of NISTAC a decade earlier. Particular attention was paid to regulatory changes or new precedents set by the U.S. Department of the Treasury and the Internal Revenue Service, and the review encompassed all matters: governance structures, policies, and practices, including those related to staff compensation. Within the review, specific consideration was given to the potential for structural simplification, that is, the consolidation of the three companies into one, specifically into NISTAC.

The review concluded that the existing organizational and governance structure of NISTAC and its two affiliated companies was proper and should not be changed. Such a structure was found most appropriate to enable proper separation of not-for-profit activities and finances from for-profit ones. It also provided additional insulation for the sponsoring institutions from the risks and liabilities associated with technology transfer and commercialization support functions. This is particularly important when technologies are commercialized through the creation and nurturing of startup or new venture companies, since these inherently are high risk undertakings. Nonetheless, the review did identify opportunities to strengthen internal structures and procedures, and all its recommendations were implemented. Some of these also were codified in amendments to NISTAC's Bylaws. For example, a Compensation Subcommittee of the NISTAC Executive Committee was formally established to oversee compensation for NISTAC staff, who are "leased employees" from MTM. This merely codified existing practices, and the amended Bylaws were forwarded to the IRS as a matter of routine.

**IN SUMMARY,** today NISTAC and its affiliates continue to be governed as autonomous companies with independent Boards of Directors. Generally, originally elected or appointed by the three institutional Members, NISTAC Directors serve without compensation, unless they also hold senior executive responsibilities under arrangements approved by the entire Board. MTM Directors of course are elected by NISTAC as shareholder, and a majority of the Board directors are not common, that is, do not serve on the Boards of both NISTAC and MTM. Serving as the Manager for MHL, MTM is directly accountable to the Member-investors, who hold the ultimate governance and oversight powers for MHL. Detailed, formal procedures also have been established to determine and oversee staff compensation as a shared function between NISTAC and MTM. Generally, the more rigorous standards of not-for-profit entities are applied with regard to compensation considerations.

Based upon a succession of outside reviews through the years, the organizational and governance structure, as well as the policies and procedures of NISTAC and its affiliates, stands today as a national model for the proper, accountable and transparent concurrent management of both a not-for-profit mission and related, but separated for-profit functions to support regional economic development. Although the organizational and structural model of NISTAC is not unique, NISTAC likely has been subjected to more scrutiny than any other similar group. The outcomes of such scrutiny continue to provide bases for a high level of confidence that NISTAC has operated, and continues to operate under the best practices needed to deliver the results expected by its institutional sponsors, and also by its Board members who donate their time, energy and goodwill to the organization.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.