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**To:** PAULA TRAHAN RIEGER, RN, MSN, CAE, FAAN  
**Date:** April 7, 2010  
**Subject:** Structure of ONS Entities

You have asked that we discuss the ONS corporate structure and the reasons behind the structure. The attached chart illustrates the current corporate structure.

**Corporate Entities**

1. **ONS** – ONS is formed as a Pennsylvania nonprofit corporation that is exempt from federal tax as a professional society under section 501(c)(6) of the Internal Revenue Code of 1986. This is the primary corporate entity with a board of directors elected by the members of ONS. Its purpose is to advance the interests of the oncology nursing profession. While it does not generally pay tax, it is liable for tax on income generated in an unrelated trade or business, as defined by the Internal Revenue Service. Contributions to ONS are not deductible as charitable contributions, and certain foundations, such as the Robert Wood Johnson Foundation and pharmaceutical company foundations, may have adverse tax consequences if they make contributions to ONS. ONS’s activities must conform to the constraints of section 501(c)(6) of the Internal Revenue Code of 1986 to preclude adverse consequences. ONS’s activities must conform with the constraints.

2. **ONCC** – ONCC is also exempt as a professional society under section 501(c)(6) of the Internal Revenue Code of 1986. Its purpose is to provide certification for oncology nurses. It was formed as a separate entity with separate governance in response to requirements applicable to certification entities with respect to independence from membership organizations. ONCC has been operated with a separate and independent board to ensure continued compliance with certification accreditation standards. Because ONCC was created by ONS and ONS provides day-to-day management of ONCC, ONCC is referred to as an affiliated corporation of ONS.

3. **ONS Foundation** – The ONS Foundation is exempt from federal tax as a charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986. Its purpose is to promote the charitable, educational, and research purposes of ONS. Contributions to the ONS Foundation are deductible as charitable contributions, and private foundations and other charitable organizations may make grants and gifts to the ONS Foundation. It was formed to accept funding that certain funders, such as pharmaceutical company foundations, could not easily provide to ONS as a professional organization.

Also, to the extent that corporation donors are required to contribute to charitable recipients, the ONS Foundation could be a recipient of those funds.

The Foundation is subject to more stringent regulation by the Internal Revenue Service than ONS because of its status as a charitable organization. For example, there are many restrictions on the ONS Foundation's ability to provide funding directly to ONS. Moreover, every project of the Foundation must further charitable, educational or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or the Foundation risks adverse tax consequences and penalties.

ONS is the sole member of the ONS Foundation, which means that ONS may appoint and remove directors of the ONS Foundation. In addition, ONS has the authority to approve the President and President-Elect, amend the governing documents of the Foundation, and approve any changes in structure to the Foundation. This control is intended to ensure that the ONS Foundation operates in accord with its mandate to further ONS's purposes within the restrictions imposed by section 501(c)(3). While the Board of Directors of the Foundation has a fiduciary duty to the Foundation, the Board of ONS also plays an oversight role. Because ONS has the right to unilaterally change the Bylaws of the Foundation, ONS can exert significant control through governance of the Foundation.

**ONS Edge** – The ONS Edge is a for-profit corporation formed to undertake activities that are unrelated to ONS's tax exempt purposes. These are activities that would generate taxable income, known as unrelated business taxable income, to ONS. While ONS can recognize some taxable income, and does through its advertising, it is best to segregate unrelated activities to the extent possible in a separate taxable entity to protect ONS's exemption. If ONS were to recognize a significant amount of taxable income directly, it could jeopardize its exemption. Thus, separately incorporating the ONS Edge as a taxable subsidiary protects ONS from adverse federal tax purposes.

ONS is the sole common shareholder of the ONS Edge, meaning that it is the only voting participant. It therefore has the ability to elect and remove board members and to control the operations of the Edge through this ownership. The Edge's purpose is also to support ONS so it would be inconsistent with its mission if it undertook any activities that were not desired by ONS.

**ONS Building Partnership LP.** – All of the corporations own an interest in the partnership that owns the building. ONS controls the partnership as the sole member of the general partner of the partnership, ONS Building LLC. This structure was put in place to permit the corporations to have an ownership interest given that they are responsible for the operating and financing costs of the building. If the building were ever to generate net revenue, such as on a sale someday, that revenue would be shared based on ownership interests. In the meantime, ONS controls the operations of the building. It is essentially managed as a shared expense of the four corporations. While this entity is included in the list, it is part of operations and does not require on-going Board involvement from any entity other than ONS, with the Board of ONS participating through the budget process.

## **Alternative Structures**

One of the questions that occur periodically is whether there is a better alternative structure for the corporations. For example, a single corporate “parent” is sometimes suggested. The rationale is that there would then be one primary board and one controlling entity. While the prospect is enticing, it would not be feasible legally. The parent entity could not qualify for federal tax-exemption, since the provision of oversight of organizations described in section 501(c)(6) of the Code (unlike section 501(c)(3) organizations) does not qualify for tax-exemption, and that could adversely affect the exemptions of the other corporations. Moreover, it could provide too much nexus between ONS and ONCC for certification purposes, which could adversely affect ONCC’s accreditation status.

## **Responsibilities of Board Members Generally**

The members of the Boards of Directors of the various corporations have a fiduciary duty to the corporation they serve and must operate in the best interests of that corporation. Overlaid on this duty, however, is the relationship with ONS, which means that directors of the Foundation and the Edge must also ensure that their decisions vis-à-vis the Foundation and the Edge are consistent with the purpose of supporting ONS. They are not corporations that were formed in a vacuum, and all activities must be undertaken so as to further the interests of ONS within the constructs of their mission.

The Boards have a general oversight role with respect to their respective corporations. They are responsible for determining the overall mission and strategy of the organization and approve significant matters, such as the annual budget and the CEO’s compensation. The CEO reports to the Board, and the other employees ultimately report to the CEO. The CEO has oversight of the operations of the corporations, with the Executive Directors of the various corporations having day-to-day control and reporting to the CEO. While the Executive Directors work directly with the Boards under the direction of the CEO and the Boards have input into the selection of the Executive Directors for their corporation, the CEO is ultimately responsible for each entity’s management through the management agreement.

## **Responsibility of ONS Board vis-à-vis ONS Foundation and the Edge**

The Board of ONS does not have day-to-day control of the Foundation or the Edge, but it does have an oversight role. For the Foundation, this oversight role is exercised through ONS’s membership rights. With respect to the Edge, the oversight role is exercised through ownership of the stock. This means that these corporations should provide periodic reports to the ONS Board so that the Board can be assured that the corporations are fulfilling their missions.

## **Relationship of ONS and ONCC**

While ONCC operates as an independent corporation with its own governing Board of Directors, the success of the organizations are intertwined in a variety of ways. ONCC has an independent Board that determines its strategic and operational goals, and ONS is responsible for carrying out the directives of the ONCC Board pursuant to a management agreement. This management

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agreement gives ONS and its executives oversight of the day-to-day administration of ONCC in accord with the ONCC Board directives. If ONCC were to terminate the management agreement, there is a financial penalty that takes into account the financial benefit derived by ONCC because of its relationship with ONS.

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