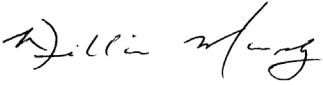





TO: Higher Education Committee

FROM: William P. Murphy 

SUBJECT: Charter Amendments and Extension of Provisional Authorization to Offer Programs Leading to Postsecondary Degrees: Glasgow Caledonian New York College

DATE: June 10, 2024

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents approve charter amendments for Glasgow Caledonian New York College to be effective upon the closing date of a Member Substitution Agreement by and between Glasgow Caledonian University and IE Universidad, and extend its provisional authorization to offer programs leading to postsecondary degrees through June 30, 2029?

Reason for Consideration

Required by State statute and State regulation.

Proposed Handling

This matter will be submitted to the Higher Education Committee for recommendation and to the Full Board for action at its June 2024 meeting. A copy of the proposed amended and restated charter (Attachment A) is attached.

Procedural History

In 2017, the Board of Regents approved Glasgow Caledonian New York College's (GCNYC) provisional charter for a five-year term and authorized the institution to offer programs in the discipline of Business, leading to the Master of Science (M.S.) degree. The five-year provisional term ended in June 2022. In April 2022, the Board of Regents extended the provisional authorization of GCNYC to offer programs leading to postsecondary degrees pursuant to sections 3.59(d)(3) of the Rules of the Board of

Regents until June 30, 2027. In October 2022, pursuant to section 3.22 of the Rules of the Board of Regents, the Board of Regents extended the provisional charter for another five-year term.

GCNYC has submitted a petition to amend and restate its charter, including changing its name to IE New York College, adding a new sole member (IE Universidad), and enumerating the reserved powers of the sole member. The institution would continue to have the authority to offer programs leading to the Master of Science (M.S.) degree. The Office of the New York State Attorney General (OAG) has been presented with the transaction and determined, in writing, that under these circumstances, it does not intend to take action with regard to the transaction.

Background Information

Glasgow Caledonian New York College (GCNYC)

GCNYC is a small not-for-profit college located in New York City that was provisionally chartered by the Board of Regents in June 2017. It has been recognized by the IRS as a tax-exempt organization described under Section 501(c)(3) of the Internal Revenue Code. It has a sole member, established in its bylaws, the University Court of Glasgow Caledonian University (“GCU”), which is the governing body of Glasgow Caledonian University, a public university located in Scotland. GCU provides funding and services to GCNYC and has since GCNYC’s inception. Despite the similarity in name to its sole member, GCNYC is a standalone institution. GCNYC has been accredited by the Middle States Commission on Higher Education since June 2018.

GCNYC is authorized to offer programs in the discipline of business leading to the Master of Science (M.S.) degree. Because the institution has a provisional charter from the Board of Regents, it cannot confer degrees. The Board of Regents confers degrees on GCNYC graduates during its provisional term. Additionally, GCNYC is subject to an annual enrollment cap of 270 full-time equivalent students across all its master’s degree programs.

Despite substantial funding from GCU, GCNYC has not been able to achieve a break-even financial position on its own. The institution indicates that this is due in large part to the fact that GCNYC was still newly provisionally chartered and trying to establish a foothold in the market when the COVID pandemic occurred (GCNYC’s peak enrollment was in the Fall of 2019), and without sufficient brand recognition in the United States, GCNYC could not promptly recover. With a continued trend of diminished enrollments, GCU concluded that the best path to a sustainable future for GCNYC was to find a new sole member with a similar mission, stronger international brand recognition and international recruitment focus, and willingness to continue to underwrite GCNYC’s growth trajectory. GCU identified IE Universidad (IEU), a private Spanish university as a potential new sole member for GCNYC.

IE Universidad (IEU)

IEU was established on April 30, 1999. It is a Spanish university with campuses in Segovia and Madrid. It is accredited by Spanish authorities and offers a diverse catalog of educational programs in English and Spanish, including business programs. IEU's business school is accredited by EFMD EQUIS in the E.U., the Association of MBAs in the U.K., and the Association to Advance Collegiate Schools of Business in the U.S. IEU enrolls students from over 130 different countries and approximately 80% of its student body comes from outside Spain. IEU has a presence in the U.S., with more than 2,800 alumni based in the U.S., and currently enrolls approximately 720 U.S. undergraduate and graduate students. IEU has three dozen university exchange agreements in place with U.S. colleges.

IEU is organized as a nonprofit civil law corporation under Spanish law, with a for-profit sole member. It is recognized as a nonprofit university by the Regional Ministry of Education (Regional Council of Castilla y Leon), but it is not tax-exempt (though it is eligible for a partial exemption for certain donations). Its sole member appoints its board, serves as an affiliated center for purposes of enrolling students and providing instruction at its Madrid location, and provides services to IEU (for which it receives remuneration under a transfer pricing arrangement performed by an independent third-party firm). IEU does not and cannot pay dividends to its sole member.

Proposed Transaction

Under the proposed transaction, IEU will become GCNYC's sole member and will initially be responsible for providing support services and funding to help GCNYC succeed. The transaction does not entail any contemporaneous request for expansion of GCNYC's academic program offerings, and the enrollment cap will remain. GCNYC will change its name to IE New York College; however, for an initial period post-closing, the College will continue to do business as GCNYC until it obtains all required regulatory approvals to implement the name change. GCNYC (to be known as IE New York College) will remain a separate not-for-profit corporation, separately accredited, and separately authorized institution of higher education. GCNYC will not be a branch campus, additional location, or otherwise be part of IEU. Each institution will have separate approvals and accreditations, separate independent governing boards, and distinct (although compatible) missions. From a corporate perspective, IEU will have less control over GCNYC than GCU can currently exercise to comply with intervening changes to the Rules of the Board of Regents.

GCNYC has sought approval from its accreditor, the Middle States Commission on Higher Education (MSCHE), for the transaction. MSCHE is expected to decide on the matter at its June 2024 meeting. Additionally, the United States Department of Education has notified GCNYC that, due to there being a for-profit member of IEU, GCNYC would be considered a for-profit institution following the transaction for federal financial aid purposes. As a result, the institution plans to voluntarily withdraw from Federal Title IV Student Aid participation for the indefinite future but has pledged to offer comparable financial aid options to impacted students. The institution will still be considered non-profit by New York State, as New York State Education Law and Not-For-Profit

Corporation Law do not forbid for-profit members with limited control. Additionally, as with all chartered New York State education corporations, the Board of Regents retains the power to appoint trustees in certain circumstances and remove trustees for cause. Furthermore, the institution will continue to be subject to standards set forth in Part 52 of the Regulations of the Commissioner that are applicable to all institutions offering academic programs leading to degrees.

Summary of Proposed Charter Amendment

To execute the transaction between IEU and GCU, GCNYC has submitted a petition to amend and restate its provisional charter (Attachment A) (Education Law 217, 8 NYCRR 3.22). The provisions of the proposed amended and restated charter include:

1. A name change from “Glasgow Caledonian New York College” to “IE New York College;”
2. Continued authority to award the Master of Science (M.S.) degree;
3. Establishment of IE UNIVERSIDAD as the sole member;
4. A set of reserved powers for the sole member that cannot be enlarged or expanded pursuant to the College’s Bylaws, which include but are not limited to:
 - a. approving changes to the institution’s charter, other than those related to the academic programs or the mission, purpose, or objectives of the college, which remain the purview of the Board of Trustees;
 - b. appointing or removing a minority of the board of trustees of IE New York College;
 - c. approving large budget variances over the prior year; and
 - d. confirming appointment of officers, but not the president or provost;
5. An independent New York-based governing board; and
6. A five-year provisional term that would end in June 2029.

The Department’s Office of Counsel and Office of College and University Evaluation have reviewed the transaction, including the reserved powers of the sole member, and find that it aligned with the original charter in 2017 and the Department’s recent guidance for similar transactions meets the requirements of section 3.59 of the Rules of the Board of Regents, and will not negatively impact the institution’s compliance with Part 52 of the Regulations of the Commissioner of Education. Additionally, the Department recommends extending the institution’s provisional authorization to offer programs leading to postsecondary degrees pursuant to section 3.59(d)(3) of the Rules of the Board of Regents to align with the term of the provisional charter.

Related Regents Items

June 2017: [Glasgow Caledonian New York College: Master Plan Amendment and Provisional Charter](https://www.regents.nysed.gov/sites/regents/files/heagc030972revised.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/heagc030972revised.pdf>)

June 2017: [Glasgow Caledonian New York College: Supplemental Charter Application](https://www.regents.nysed.gov/sites/regents/files/617bra1supplemental.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/617bra1supplemental.pdf>)

April 2022: [Extension of Provisional Degree Authority: New York Automotive and Diesel Institute, Glasgow Caledonian New York College, and City Seminary of New York Graduate Center](https://www.regents.nysed.gov/sites/regents/files/422brca1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/422brca1.pdf>)

October 2022: [Charter Applications](https://www.regents.nysed.gov/sites/regents/files/1022bra1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/1022bra1.pdf>)

Recommendation

The Department recommends that the Board of Regents take the following action:

VOTED: That the Board of Regents approve Glasgow Caledonian New York College's amended and restated charter, effective upon the closing date of a Member Substitution Agreement by and between Glasgow Caledonian University and IE Universidad, and extend the institution's provisional authorization to offer programs leading to postsecondary degrees until June 30, 2029.

Timetable for Implementation

If the Board of Regents approves the charter amendment and extension of authorization to offer programs leading to postsecondary degrees, the charter amendments will be effective upon the closing date of a Member Substitution Agreement by and between Glasgow Caledonian University and IE Universidad, anticipated to take place in late June or early July 2024.

IE New York College (IENYC) must apply to the Department for an absolute charter at least twelve months prior to the expiration of the provisional charter. At that point, the Board of Regents will decide whether to grant IENYC an absolute charter, extend the provisional charter, or deny IENYC any charter authority past the term of provisional authorization. If IENYC does not apply for an absolute charter with the authority to confer degrees at least twelve months before the provisional period expires, the provisional charter will expire at the end of its term.

In accordance with section 3.59(d)(1) of the Rules of the Board of Regents, IENYC must apply to the Department for permanent authorization to offer programs leading to postsecondary degrees at least twelve months prior to the expiration of the provisional period (June 30, 2028). The Board of Regents will then determine, pursuant to section 3.59(d)(4), whether to grant IENYC permanent authorization, extend the provisional

authorization, deny permanent authorization and extend the provisional authorization period with limited authority for the purposes of teach-out and closure, or deny permanent authorization and direct immediate closure. If IENYC does not apply for permanent authorization, the provisional authorization will expire at the end of the term of provisional authority. The Board of Regents will continue to confer degrees on GCNYC and IENYC's graduates during the provisional term.

Attachment A

Form of Amended and Restated Provisional Charter

1. The provisional charter of Glasgow Caledonian New York College (the “College”), located in the city, county, and state of New York, was granted by the Regents at their meeting of June 13, 2017, for a term of five years. The College timely applied for a permanent charter, and, at its April 2022 meeting, the Regents voted to extend GCNYC’s provisional authorization through June 30, 2027. At its October 2022 meeting, the Regents also granted the College an Extension of Provisional Charter through October 4, 2027.
2. The name of the College is hereby changed to “IE New York College”.
3. The purposes for which such a corporation is formed are:

To operate a college in the State of New York with the authority to offer programs that lead to the Master of Science (M.S.) degree.
4. The sole member of the College is IE UNIVERSIDAD, a private university acknowledged by Act 4/1997, of 24 April 1997, of the Autonomous Community of Castilla y León, as a non-profit, civil law corporation.
5. The sole member and any educational activities it may conduct in New York shall be subject to and comply with all of the statutory provisions, Rules of the Regents, and Regulations of the Commissioner that would be applicable to a corporation created by the Regents pursuant to section 216 of the Education Law for the same purpose or purposes.
6. The sole member shall have, subject to the requirements of the New York Education Law and the Internal Revenue Code of 1986, as amended (the “Code”) (or the corresponding provision of any future Federal tax code), all of the powers of a member of a not-for-profit corporation permitted by the New York Not-for-Profit Corporation Law, inclusive of the following reserved powers, which reserved powers shall not be enlarged or expanded pursuant to the College’s Bylaws:
 - i. Approve any proposed amendment, modification, alteration, or repeal of the College’s Charter or its Bylaws, provided, that the Board of Trustees of the College (the “Board”) shall have sole authority to approve such actions related to the mission, purpose, or objectives of the College, the establishment (or elimination) of academic degrees or programs, and the establishment (or closure) of branch campuses or additional locations;
 - ii. Approve any budget proposed by the Board for a fiscal year where the budget has a variance of greater than 10% in Total Revenue,

greater than 10% in Total Expenses, or greater than 10% in Change in Net Assets from the prior fiscal year;

- i. Approve major investments or other major transactions, including, but not limited to mergers, consolidations, or acquisitions; the sale, purchase, lease, or encumbrance of real property; significant contracts; and significant indebtedness, transfers, encumbrances, or other dispositions of the assets of the College;
 - iv. Grant or permit to exist any security interest, pledge, lien, or encumbrance on any of the College's assets except in connection with indebtedness otherwise approved or other than in the case of ordinary operating leases for capital equipment;
 - v. Approve the creation of any subsidiaries or affiliates of the College;
 - vi. Approve the acceptance by the College of the terms of major charitable gifts;
 - vii. Approve the proposed dissolution, merger, consolidation, or liquidation of the College or the sale of all or substantially all of its assets and recommend the distribution of its assets upon dissolution consistent with applicable law and Code requirements;
 - viii. Confirm the Board's selection and appointment of the Officers of the College other than the President & Chief Executive Officer and the Chief Academic Officer;
 - ix. Receive information and reports about the College and its operations, including, without limitation, the College's audited financial statements;
 - x. Agree to take any of the actions that are subject to the reserved powers set forth in (i) through (ix) above.
7. A majority of the Board shall be comprised of New York-based Trustees who qualify as independent under applicable law and accreditation requirements. The Board shall be elected or appointed in accordance with this Charter to serve for the terms set forth therein, or until their earlier resignation or removal, whether with or without cause, with there being such number of Trustees as set in accordance with the College's Bylaws, provided, that in no event shall the Board consist of less than seven (7) Trustees or more than twenty-five (25) Trustees. The Trustees will be elected as follows:
- a. The sole member shall designate for election as Trustees that number of

Trustees equivalent to the whole number that is immediately less than the number obtained by dividing the total number of Trustees in half; and

- b. The Board shall designate for election as Trustees that number of Trustees equivalent to the whole number that is immediately greater than the number obtained by dividing the total number of Trustees in half provided that in designating for election such Trustees, the required vote shall require a majority of the Trustees then in office and the Board shall designate individuals such that at all times the Board shall have a majority of members who are New York-based and who qualify as independent under applicable law and accreditation requirements.

Trustees designated for election by the sole member may be designated for removal by the sole member; Trustees designated for election by the Board may be designated for removal by the Board.

8. Amendments to the College's Bylaws may be made by the sole member or by the Board, provided that amendments made by the Board shall be proposed by the sole member of the Board and may be made by the affirmative vote of two-thirds ($2/3$) of the Trustees present at a meeting at which a quorum is present, or by unanimous written consent, provided that in either case: (1) the notice of the meeting or notice for unanimous consent discloses the proposal to amend the Bylaws, and a copy of the proposed amendment(s) is included with the notice, and (2) where the amendment to the Bylaws is proposed by the Board, the sole member consents to such amendment.
9. The corporation hereby created shall be a nonstock corporation organized and operated exclusively for educational purposes, as defined in section 501(c)(3) of the Code (or the corresponding provision of any future Federal tax code), and no part of the net earnings or net income shall inure to the benefit of any member, trustee, director or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no member, trustee, director or officer of the corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation.
10. Notwithstanding any other provision of these articles the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future Federal tax code) or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future Federal tax code).

11. No substantial part of the activities of the corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, (except to the extent authorized by Internal Revenue Code section 501(h) as amended, or the corresponding provision of any future Federal tax code, during any fiscal year or years in which the corporation has chosen to utilize the benefits authorized by the statutory provision) and the corporation shall not participate in or intervene (including the publishing or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office.
12. Upon dissolution of the corporation, the Board shall, after paying or making provision for the payment of all the liabilities of the corporation, dispose of the remaining assets of the corporation exclusively for one or more exempt purposes, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future Federal tax code), or shall distribute the same to the Federal government, or a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by order of the Supreme Court of the State of New York in the judicial district where the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, organized and operated exclusively for such purposes, as said Court shall determine.
13. The principal office of the corporation shall be located at 64 Wooster Street, New York, New York.
14. The Commissioner of Education is designated as the representative of the corporation upon whom process in any action or proceeding against it may be served.
15. Nothing contained in this Charter shall authorize IE Universidad to operate, maintain, or manage a charter school, a nursery school, a kindergarten, an elementary school, a secondary school, a Licensed Private Career School, or Certified English as a Second Language School unless authorized under Article 101 of the Education Law, a college, university, or to advertise or offer credit-bearing courses or degrees in New York State.
16. Such provisional charter will be made absolute if, within five years after the date when this Charter is amended and restated, the corporation shall acquire resources and equipment which are available for its use and support and which are sufficient and suitable for its chartered purposes in the judgment of the Regents of the University, and shall be maintaining an institution of educational usefulness and character satisfactory to the

Regents. Prior to the expiration of said five-year period, an application for the extension of such provisional charter or an absolute charter will be entertained by the Regents, but if such application is not made, then at the expiration of said term of five years, and upon notice by the Regents, such provisional charter shall terminate and become void and shall be surrendered to the Regents.