

 The University of British Columbia Board of Governors	Policy No.: 105	Approval Date: November 2000 Last Revision:
	Responsible Executive: Vice-President, Administration and Finance Vice-President, Research	
Title: <p style="text-align: center;">Acceptance, Management and Sale of Technology Licensing Equity</p>		
Background & Purposes: To establish guidelines for the University concerning equity transactions related to University technology companies, management of the equity in those companies and to ensure a fair distribution of the proceeds from liquidated equity holdings to benefit the University as a whole.		

1. General

- 1.1. Transfer by the University of its rights in an invention(s) to investor(s) by way of a licence agreement may include the provision for the University to receive an equity position in a technology company.
- 1.2. A decision to take an equity position requires prior consultation with the inventors to enable understanding of the nature of the equity transaction and ensuring the opportunity to obtain independent legal and tax advice. Each inventor is required to provide the University-Industry Liaison Office (“UILO”) with a full disclosure of his/her relationship with the company in which equity forms all or a part of any financial arrangement with the University.
- 1.3. The UILO is responsible for the negotiation of technology equity transactions.
- 1.4. The Technology Equity Management Committee is responsible for the management of the University’s equity in technology companies governed by this policy.

PROCEDURES

Approved: November 2000

Pursuant to Policy #1: Administration of Policies, "Procedures may be amended by the President, provided the new procedures conform to the approved policy. Such amendments are reported at the next meeting of the Board of Governors and are incorporated in the next publication of the UBC Policy and Procedure Handbook."

1. Inventor Consultation and Disclosure

- 1.1. Prior consultation with the inventors is required to ensure that they understand the nature of the equity transaction. In addition the following is required:
 - 1.1.1. Each inventor is required to provide the UILO with a full disclosure of his/her relationship with the company. This includes equity held in the company, positions held on company boards, as an officer or employee of the company, or any private consulting arrangements with the company;
 - 1.1.2. Confirmation that they have been advised to seek independent legal and tax advice in relation to the equity transaction. The cost of any independent legal or tax advice will be borne by the inventor.
- 1.2. Where inventors choose to be directly compensated by the company, they will be required to waive their rights to share in equity or royalties received by the University. In such cases, the University will pro-rate the level of compensation required under the licence agreement to net out the inventor's share.

2. Structuring Equity Transactions

- 2.1. The University's equity position shall be in consideration of the intellectual property assigned or licensed to the company. In any arrangement full consideration shall be given
 - 2.1.1. to securing anti-dilution provisions through the achievement of milestones related to a pre-determined level of investment, cumulative sales revenue, or initial public offering (IPO) with dilution of the University's equity position being linked to acquisition of additional capital;
 - 2.1.2. the exercise by the University of its right to invest in follow-on rounds of financing;
 - 2.1.3. price protection or anti-dilutive provisions to guard against dilution that may occur through a subsequent financing at reduced share prices;
 - 2.1.4. to obtaining piggy-back registration rights to enable the future sale of the equity.
 - 2.1.5. University representation on the Board of Directors through a seat on the board, observer status at board meetings, or full copies of all material distributed to the board and minutes of board meetings. In cases where the University has a board seat, the University shall provide a written request to the University's nominee thereby invoking the University insurer's coverage for that individual. Any fees, options, or shares received as compensation for attending board meetings shall be deemed compensation to the University.

3. Distribution of Equity

- 3.1. Equity shall be distributed as soon as possible to co-licensors (i.e. affiliated hospitals) and inventors subject to:
 - 3.1.1. Any pooling, hold or escrow restrictions;
 - 3.1.2. Securities regulations; and
 - 3.1.3. Holdbacks for covering the direct costs of the transaction.
- 3.2. Following the distribution of equity, it shall be the sole responsibility of the inventor(s) to manage the inventor(s)' shares and to comply with any tax, legal or contractual obligations associated with the distribution, ownership or disposition of the inventor(s)' shares.
- 3.3. Share certificates shall be forwarded to UBC Treasury at the earliest opportunity for recording, distribution, management and safekeeping.

4. Distribution of Net Revenue

- 4.1. In respect of each technology covered by this policy
 - 4.1.1. Net Revenue earned by the University from its share of equity after the foregoing distribution will be distributed as follows:
 - 4.1.1.1. 25% to the Inventor's faculty
 - 4.1.1.2. 75% to University General Revenue

5. Due Diligence Consideration by the Board of Governors

- 5.1. Any transaction under this policy that requires Board approval shall be accompanied by a certificate from an independent third party nominated by the UILO indicating that the value of the consideration received by the University is commensurate with the value of the rights granted by the University. In respect of all other transactions, an annual summary will be given to Board disclosing the technology company, the equity held, and the technology given as consideration.

6. Taxation Considerations

- 6.1. As legally required by Revenue Canada, the University will file an information return in the form of a T4 with respect to the value of shares transferred to researchers who are employees or former employees. Payment to employees or former employees or non-resident shall be contingent on
 - 6.1.1. the withholding of amounts in respect of income tax, Canada Pension Plan contributions and Employment Insurance contributions as may be required;
 - 6.1.2. employees and former employees will only be required to include the value of shares in income in the year that they are received from the University;
 - 6.1.3. the value of the shares should be determined as of the date that the shares are transferred to the employee or former employee;

- 6.1.4. if the researchers are students with no employment relation to the University, then the University will be responsible to issue a T4A slip to the student;
- 6.1.5. if the value of the equity is uncertain it is the responsibility of the University to have the equity valued by a qualified valuator using accepted valuation techniques. In situations where the equity is privately held and has an established fair market value, the researchers may be placed in a situation where taxes are payable on the value of the equity, yet there exists no market for the equity. Inventors should consider detailed tax planning to minimize the tax consequences of these transactions;
- 6.1.6. other lawful requirements of Revenue Canada

7. Relationship Management

- 7.1. Acting for the University as shareholder in and of university licensed technology company under this policy, UILO shall
 - 7.1.1. exercise all voting shares and exercising other shareholder rights such as attending the company annual general meeting, waivers of pre-emptive rights, etc. shall be the responsibility of the UILO;
 - 7.1.2. monitor company performance and adherence to the terms of the licensing provisions;
- 7.2. However, UILO's authority is limited to standard transactions. Issues of a precedent setting nature or that exceed \$500,000 in value shall be managed in accordance with UBC signing resolution #8 - Research.
- 7.3. If a member of the University community is requested by the University to serve as a member of the Board of Directors of the company, then any options or shares that that individual receives as compensation for his/her services on the Board shall be transferred to the University.

8. Conflict of Interest

- 8.1. The Board's conflict of interest policy (#97) applies. The University's decision to take equity in a company creates the potential for conflicts of interest for both the University and the researchers.
- 8.2. Where in the subsequent licensing of other University technology to the company in which the University is already a shareholder, the University must carefully consider whether it is receiving fair consideration for the second technology and whether the transaction is being affected by the fact that it is already a shareholder in the licensee company.
- 8.3. Where a researcher has a substantive role in the operation of the company (as a founder, officer, director, shareholder, or consultant), the University needs to ensure that it has received full disclosure of the researcher's interests in the company. It must also ensure that there is a mechanism to manage ongoing disclosure of new technologies and improvements to existing technologies.

9. Insider Trading

- 9.1. Insiders are those who are in "a special relationship with a reporting issuer" and includes all persons who may receive or have access to confidential information. "Insiders" of a company are:
 - 9.1.1. directors, officers and employees of the company, its parent company and/or its subsidiaries;

- 9.1.2. persons who are outsiders of the company including “persons that are engaged in or proposing to engage in any business or professional activity with or on behalf of the company”;
- 9.1.3. employees of the University who are engaged in or who proposed to engage in research and development of the technology licensed to a reporting issuer would be an insider of the reporting issuer.
- 9.2. Insider status continues even after the business relationship between the employee and the reporting issuer has been terminated if the inside information existed prior to termination of the business relationship.

10. UBC Staff as Shareholders

- 10.1. The Vice-President, Research shall develop guidelines, to be approved by the Board, that will apply to investments by UBC staff members in licensees of University technology.

11. Definitions

- 11.1. *Equity* includes shares of stock, and also other forms of securities such as warrants, options, share appreciation rights, and interests in limited partnerships, private or publicly traded companies.
- 11.2. *Net Revenue* is calculated as:
 - 11.2.1. gross revenue from liquidated equity and dividends
 - 11.2.1.1. Less uncovered direct costs of patenting, prototype development, and licensing legal fees
 - 11.2.1.2. Less 15% of the balance remaining after deduction (1) to be used in support of UILO operations
 - 11.2.1.3. Less any distributions to co-licensors (which are generally calculated as a percentage of the balance remaining after deduction (1)).