Berkeley
UNIVERSITY OF CALIFORNIA

Carol T. Christ
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ASSISTANT VICE CHANCELLOR, INTELLECTUAL PROPERTY & INDUSTRY RESEARCH ALLIANCES

RE: Delegation of Authority DA 2650 - Responsibility for Acquisition, Management and Disposition of Innovation Equity

Per the authority granted to the Chancellor in the August 9, 2022 letter from President Drake regarding DA 2650 - Responsibility for Acquisition, Management, and Disposition of Innovation Equity, I hereby redelegate the authority for equity management, per University Bylaw 23.5(d), to your role as Assistant Vice Chancellor, Intellectual Property & Industry Research Alliances.

This transfer of authority is subject to the attached Guiding Principles for Campus Innovation Equity Management Programs and applicable laws and policies. Once the attached certification is completed, the following systemwide policies and guidelines will no longer apply to UC Berkeley:

- University Policy on Accepting Equity when Licensing University Technology
- Business and Finance Bulletin G-44, Guidelines on Accepting Equity When Licensing University Technology
- Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services

This authority is effective immediately and may not be further redelegated. Should you have any questions or concerns, please contact the Campus Assistant Delegations of Authority Coordinator Andrea Whipple-Samuel, Compliance & Policy Specialist, at awhipplesamuel@berkeley.edu.

Signed,

[redacted]

Carol T. Christ

Attachments
cc: Andrea Whipple Samuel – Delegations of Authority Coordinator
Laila deBerry – Campus Risk Manager
David Robinson – Chief Campus Counsel
Kathy Yelick – Vice Chancellor for Research
Rich Lyons – Associate Vice Chancellor & Chief Innovation & Entrepreneurship Officer
Jaime Jue – Director, Audit and Advisory Services
Carol Mimura – AVC, IP & Industry Research Alliances

Attachment 1

Guiding Principles for Campus Innovation Equity Management Programs

May 30th, 2022

BACKGROUND

In December 2019, the Board of Regents formed the Regents Working Group on Innovation Transfer and Entrepreneurship (the Working Group) to understand the University of California's (University) opportunities and how it could better promote innovation transfer and entrepreneurship.

In May 2021, the Working Group published a report which included a recommendation that campuses manage equity received from licensing, incubator/accelerator activities and other commercial arrangements (Innovation Equity). UC Investments previously had sole authority over this function. Equity management includes acting as custodian; managing corporate actions; reviewing documentation related to mergers, acquisitions, IPOs, dissolutions, restructurings, and liquidations; deciding when to sell shares; and deciding whether to exercise or waive participation rights.

GOVERNANCE

To implement this recommendation, in July 2021, the Board of Regents approved an amendment to University Bylaw 23.5(d) to give concurrent authority "over the acquisition, management and disposition of all campus equity received pursuant to licensing, incubator/accelerator activities and other commercial arrangements" to the Chief Investment Officer *and* the President. This Bylaw change enabled the President to issue a delegation of authority to campus Chancellors on August 9, 2022. UC Investments will eventually cease management of Innovation Equity for all campuses.

GUIDING PRINCIPLES

These Guiding Principles and related University policies and guidelines provide a framework for the campuses and national laboratory to develop their Innovation Equity management programs. The acceptance of equity should be based on values of openness, objectivity and fairness in decision making, driven by the University's missions of education, research.

Principle 1: Accepting, taking custody of, and decision-making regarding the sale, transfer, and management of Innovation Equity, must comply with applicable laws (including laws prohibiting insider trading), campus and University policy, and third party contractual arrangements.

> Industry standard equity disposition management models often utilize formula based approaches. Separating licensing and Innovation Equity management duties can prevent insider information from reaching and influencing an equity manager's decisions. All transactions should reflect arm's length terms.

Principle 2: The type and amount of Innovation Equity consideration received must be operationally feasible for the campus to administer.

Accepting Innovation Equity in the form of options or warrants may require action by the campus and/or cash payments to exercise. It also may be practical to require a portion of the consideration to be in the form of cash to enable the campus to cover out-of-pocket expenses related to patent prosecution, licensing, and incubator/accelerator infrastructure. Additionally, controlling equity stakes (i.e. >20%) may require the University to apply equity accounting and/or consolidate the company financial statements into the University's financial statements.

Principle 3: The University must be operated for public (i.e., charitable, educational and scientific research purposes) rather than private purposes, and the net assets of the University cannot inure to the benefit of a private party.

Transactions with private parties must: a) represent arm's length-terms, and b) reflect adequate consideration (generally, fair market value) for University resources, including staff time, equipment use, space or University intellectual property. Additionally, "insider" transactions that involve certain University officials, their family members, or entities they control, require additional approvals utilizing comparability data, including from the Board of Regents. Finally, new inventions should always be licensed to the company best able to develop them; preferential treatment should not be afforded to companies in which the University already has an equity stake.

Principle 4: Employees' duties to the University and public must take priority and may limit the extent to which University employees can accept fiduciary and voting responsibilities in a private company.

Fiduciary and/or voting responsibilities may accompany i) a University employee serving on the board of directors of a company or ii) a campus taking a significant equity stake in a company. Active participation on boards or exercise of voting rights could subject the University to corporate governance responsibilities, conflict of interest concerns, and reputational risk.

Principle 5: Holding and managing equity on behalf of inventors, joint owners, and inter-institutional partners entails risk that campuses must evaluate.

Campuses may decide whether to distribute Innovation Equity to inventors and joint owners of inventions or manage Innovation Equity on their behalf. Campuses may adopt policies requiring start-up companies to issue shares directly to inventors and joint owners to potentially simplify equity management. Campuses willing to manage Innovation Equity on behalf of inventors and third parties should adopt and communicate a transparent and consistently applied equity management plan.

Principle 6: Equity management functions outsourced to third parties must adhere to these Guiding Principles and UC Procurement policies, and may raise business and policy questions for the campus to resolve.

To the extent that campus foundations or other university-related entities intend to manage Innovation Equity, additional analysis and approvals may be necessary to protect each party's corporate governance and tax structure and to mitigate risk.

Principle 7: Campus record-keeping practices regarding its Innovation Equity holdings must enable campus and systemwide reporting and compliance obligations.

UC Investments, Chief Financial Officer, Innovation Transfer and Entrepreneurship Accounting, and other systemwide stakeholders will require current and accurate data, including real-time inventory of public company stock holdings, for financial accounting, regulatory, and compliance purposes.

<u>Principle 8</u>: Acceptance and management of Innovation Equity must comply with all applicable conflict of interest laws and policies.

> Inventors or administrators who have a disqualifying financial interest should not influence licensing and incubator/accelerator decisions unless mitigated by a formal conflict of interest review process. Campuses should mitigate any organizational conflicts of interest when the University owns equity in the research sponsor.

<u>Principle 9</u>: The University's 501(c)(3) status mandates that its activities, including innovation transfer and entrepreneurship activities, must further its tax-exempt purposes (e.g. charitable, educational, or scientific research purposes). Activities that are unrelated to the University's tax-exempt purposes may constitute unrelated trade or business activities, which will require additional analysis and reporting.

> Innovation transfer and entrepreneurship activities may be consistent with the University's charitable, educational and scientific research purposes, if they are structured appropriately. All campus units engaging in activities with the potential to generate revenue, must complete and submit the Unrelated Business Income Nonfinancial Questionnaire prior to engaging in the activity. Net income from unrelated trade or business activity will generally be subject to tax at standard corporate rates which would be payable by the campus.

<u>Principle 10</u>: Innovation activities involving private parties should not jeopardize the University's tax-exempt bonds or capital leases.

> Campus innovation activities should not be conducted in tax-exempt bond-financed space or use tax-exempt bond-financed equipment without consulting bond counsel.

Attachment 2

Campus Innovation Equity Management Program

Certification

The undersigned hereby certifies that the ________ campus possesses a defined strategy, sufficient internal controls, and programmatic infrastructure to effectively manage Innovation Equity and associated risk. The ________ campus will assume full responsibility for equity management activities at its own expense. Such activities will include acting as custodian of equity, exercising the right to vote on corporate actions, deciding when to liquidate shares, and determining whether to exercise or waive participation rights. The ________ campus commits to provide the necessary resources and/or staff with appropriate expertise, develop process management procedures, ensure adequate funding for proper administration, provide data to comply with reporting requirements, and effectively manage institutional risks in accordance with the Guiding Principles for Campus Innovation Equity Management Programs and applicable laws and policies.

____ _______________

Chancellor, ________ campus Date

Return signed to: UC Office of the President, Executive Director Research Policy Analysis and Coordination Deborah Motton at Deborah.Motton@ucop.edu with a cc to Executive Director Innovation Transfer and Entrepreneurship Bruce Hunter at Bruce.Hunter@ucop.edu