

GUIDANCE PRINCIPLES ON CONFLICTS OF INTEREST THAT ARE GENERATED FROM FACULTY MEMBER FINANCIAL INVOLVEMENT WITH STARTUP COMPANIES

BACKGROUND

- In 1996-97, the University (as required by the five-campus merger legislation of the Commonwealth of Massachusetts) developed its own policies and procedures for governing financial conflicts of interests in matters specifically related to intellectual property and technology transfer.
- With the adoption of these policies and procedures, the University became the primary entity in the Commonwealth to have control over conflicts of interest regarding intellectual property and commercial ventures at the University.
- Under the policies and procedures, the University's Conflicts Committee (“the Conflicts Committee”) reviews conflict situations on a case-by- case basis and has broad discretion to approve, deny, or approve with conditions proposed relationships between the University and faculty member owned startup companies.

PERSPECTIVES AND INTERESTS OF THE UNIVERSITY

- The University recognizes the need to advance the commercialization of its inventions that are based on University research as a way to promote the University’s mission of education, research and service.
- After consideration of potential commercialization avenues for its inventions, the University may determine that the optimal way to commercially advance the discoveries is through the licensing of those inventions to startup companies.
- Such licensing can enable the translation of the inventions into practical applications for society, the receipt of licensing income for the University and faculty members, the provision of additional sources of research funding for the University, economic development benefits for the Commonwealth, and important learning experiences for students.
- However, the involvement of faculty members with those companies in which they have financial involvement, e.g., ownership interests, carries with it the potential for generating conflicts of interests that need to be disclosed, reviewed, and formally managed by the University. When managed, they need to be managed appropriately so as to preserve the values and interests of the University and the Commonwealth, including without limitation the integrity of University research.

A FACULTY MEMBER'S INVOLVEMENT WITH A STARTUP COMPANY WILL OFTEN GENERATE A CONFLICT OF INTEREST THAT MANIFESTS ITSELF AS A CONFLICT OF COMMITMENT

- Each campus is responsible for applying its own University outside activity policy to address conflicts of commitment issues, but such issues are often entangled with conflict of interest cases associated with financial interests of the faculty member. All University and campus policies require that faculty members give their primary commitment and allegiance to the University. The amount of time a faculty member needs to spend on certain commercial ventures could result in a conflict of commitment.
- In most cases, the commitment that a faculty member can make to establish, and work for, a startup company as an outside activity is initially determined by University policy, e.g., the University outside activity policy for a particular campus, and the faculty member's respective campus college dean and/or campus department head/chair. If the outside activity were to proceed, the Conflicts Committee will always review, and usually place additional conditions, on the outside activity because receipt of equity and/or other forms of consideration by the faculty member from the startup company for his/her work will generate a financial conflict of interest for the faculty member. In extreme cases, the Conflicts Committee may recommend that faculty members seek an unpaid leave of absence from the University as a way to address the conflicts.

CONFLICTS OF INTERESTS THAT MAY ARISE FROM A FACULTY MEMBER'S FINANCIAL INTEREST IN A STARTUP COMPANY AND GENERAL APPROACHES TO DEALING WITH THEM

- In many instances, a faculty member may want to establish and work for, either as an employee, a fiduciary, and/or a consultant, of a startup company that may be based on University owned inventions and by doing so the faculty member may receive financial interests in the startup company in the form of equity and/or other valuable consideration, e.g., salary, consulting fees, etc.
- Conflicts of interest will arise from those financial interests when the faculty member wishes to: 1) directly or indirectly transact business on behalf of the startup company with respect to inventions that are owned by the University; 2) conduct research at the University that is related to the startup company's business; or 3) involve students at the University in such research or business.
- The Conflicts Committee will require management of those conflicts of interest to: 1) maintain the highest level of scientific integrity in the conduct of University research; 2) adhere to generally accepted academic standards regarding dissemination of research findings; 3) protect the educational process and educations of students; and 4) ensure the financial wellness of the University.

- In cases where those issues have arisen, the Conflicts Committee has permitted the faculty member to establish, and work for, the startup company under certain conditions.
- Those conditions have included allowing the faculty member to: 1) hold an executive or fiduciary role in the startup company only until such time as the startup company has secured significant external investment; and 2) negotiate in good faith on behalf of the startup company only standard option agreements to University owned inventions and only in the event the faculty member is the only person who can reasonably negotiate the agreements on behalf of the startup company.
- In addition, the conditions have: 1) emphasized that the faculty member needs continuing approval from his/her respective campus college dean and/or campus department head/chair for outside activities related to startup company; 2) places a restriction on that approval that the work be no more than one day a week if the faculty member is being paid by the University on a full-time basis; and 3) requires the faculty member and startup company to execute the University campus-specific uniform consulting agreement provisions on intellectual property (also referred to as the “consulting rider” or “standard form rider”), which provisions address the assignment of intellectual property that may be made by the faculty member during any consulting or employment with the startup company.
- The conditions have also required that the faculty member: 1) be subject to a research oversight committee that can monitor the faculty member’s research at the University which relates to technologies of interest to the startup company; 2) disclose his/her financial interests in any presentations and publications, including both research and teaching, relative to any sponsored research or grant activity associated with the technology of interest to the startup company; 3) not to have any participation in decision-making for other researchers at the University on projects of interest to the startup company; and 4) seek formal approval from the Conflicts Committee to engage in any research at the University that may be funded by the startup company, which formal approval will place condition on the faculty member’s level of participation in that research.
- In cases where the faculty member’s students may be affected by the faculty member’s work at the startup company and to prevent any potential compromises of their educational experiences at the University that may occur due to the financial interest of the faculty member, the Conflicts Committee has required that the faculty member agree to eliminate and/or significantly reduce, e.g., through shared mentorships of the student with non-conflicted University faculty members, his/her pedagogical/advisory/supervisory role over those students as it pertains to research results of technologies of interest to the startup company, e.g., whether the research results are used to support theses, dissertations or otherwise.
- Once the startup company reaches a certain level of maturation, the faculty member should expect that other conditions might be applied to his/her continued, potentially expanding, interaction with the company. One of those other conditions might limit the role of the faculty member to solely being an advisor on the company’s Scientific Advisory Board.

- In situations where the startup company proposes any human subject research, mitigation plans must be developed that protect the rights and welfare of participants in such research as well as the integrity of the data that is generated from that research. Any proposed human subject research must be managed on a case-by-case basis considering the role of the faculty member in the proposed human subject research and other additional factors.

ASSISTANCE FOR FACULTY

- Faculty* with questions about these Principles and workings of the Conflicts Committee should contact their Vice Chancellor for Research or equivalent chief research officer.

*These guidelines also pertain to students and other staff of the University who may have conflicts of interest that arise from their financial involvement with startup companies.