

Equity Administration

Effective Date: March 2, 2017
Function: Industry and External Affairs
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Basis for Procedure

Following the adoption of a new policy on Joint Ventures, it was necessary to document the process through which campuses may work with central office in order to accept and manage equity through various transactions.

Procedure Summary

This procedure prescribes the required steps for the Research Foundation for The State University of New York's ("RF") Central Office and campus-based RF Operations Managers ("OMs"), and their delegates, to report, account, and distribute Equity in Lieu of Payment ("EILP") from License Agreements and Incubator Program agreements as described in the Equity Administration Policy.

Procedure

Due Diligence

In the event that the entity in which the RF will receive an interest (the "Target Entity") has been in existence for longer than 365 days, the RF will require that the Target Entity provide the campus OM with a copy of the results of a full search (i.e., UCC search, litigation search, judgment search, bankruptcy search and tax lien search) on the Target Entity from a reputable search company, such as Corporation Service Company, prior to the RF agreeing to take such EILP. In all cases, regardless of length of existence, the Target Entity must provide copies of the corporate governance documents for the Target Entity in accordance with Step 3, below. The OM will provide search results to the Director of New Ventures upon receipt.

Structure of Entities in which the RF will take Equity

Generally the preferred corporate structure for companies in which the RF will acquire EILP is a corporation, and more specifically, a "C" corporation. However, EILP may take the form of stock in a corporation, membership interests in an Limited Liability Company ("LLC"), options or warrants to acquire equity at a future date, or debt instruments, such as bonds or notes, that are convertible into equity or that grant the right to acquire equity in the future provided that the appropriate below referenced form is utilized.

Distribution of Proceeds from Sale or Transfer of EILP

In recognition of the restrictions placed on the transferability of shares in Target Entities by applicable securities laws and the lack of a market for shares of EILP, the RF shall hold the EILP in its name until such time as there is a liquidity event or the campus OM otherwise determines, in his/her absolute discretion, to sell the EILP. Upon the RF's receipt of the proceeds from such sale or transfer of the EILP, the RF will distribute the inventors' share of such proceeds in accordance with the SUNY Patent and Inventions Policy and the RF's Procedure on the Distribution of Royalty/Commercialization Income. Contemporaneously with the execution of the related License Agreement or other document giving rise to the RF's receipt of the EILP, the RF shall receive a "hold harmless" letter in the form linked below from the inventor(s) which has been acknowledged in writing by the OM.

Notice of Agreements and Changes

As required by the Equity Administration Policy, OM's are responsible for providing the Director of New Ventures with a copy of any License Agreement or Incubator Program agreement that includes an equity provision within thirty (30) days of execution along with the other documents and instruments referenced in

the Policy. Following their review, the Director of New Ventures will provide copies of all notices received, along with associated equity instruments, to the RF Finance Department.

Any loss or damage to the RF as a result of such decisions or the RF's receipt or management of EILP shall be borne by the campus in accordance with the RF Responsibility for Losses Policy.

All stock certificate transactions require the signature of the RF Chief Financial Officer, unless the requirements of the specific instrument specify otherwise.

The OM will be responsible for correspondence with licensees regarding actions affecting the RF's EILP positions, and will consult with the RF Office of Innovation and Partnerships, General Counsel, and Finance Office regarding required RF action.

Records Management, Assessment, and Reporting

The RF Finance Office will maintain all instruments conveying EILP to the RF, and the RF Chief Financial Officer will be the Office of Record for the financial data relating to such instruments (e.g. operating agreements, stock certificates, warrants, etc.).

Procedure Summary Chart

The following chart summarizes the steps to be followed in connection with a transaction involving EILP:

Step	Role or Responsibility	References or Tips
RF OM or delegate notifies RF Director of New Ventures of contemplated execution of license agreement involving EILP	RF OM or delegate, Director of New Ventures	
Evaluate status and health of Target Entity	Target Entity, OM, Director of New Ventures, RF General Counsel	UCC, litigation, judgment, bankruptcy, available financial statements or tax returns and tax lien searches are helpful tools to use when assessing the health of entities
Review corporate governance documents for Target Entity	Target Entity, OM, Director of New Ventures, RF General Counsel	Depending of the type of entity, and jurisdiction in which Target Entity was formed, these can be different documents or have differing titles. Consult with RF General Counsel
If results from number 2 and 3 are positive, transaction agreements are negotiated with Target Entity	RF OM or delegate, RF General Counsel	
Inventor is informed of the prospective transaction	RF OM, TTD, Incubator Director, or delegate	
RF Hold Harmless Letter executed and acknowledged	RF OM or delegate	
Copy of License Agreement or Incubator Program agreement with equity provision sent to Director of New Ventures along with all above referenced organizational and other documents	RF OM or delegate sends to RF Director of New Ventures	
Acknowledgment of stock transaction is sought (unless the requirements of the instrument specify otherwise)	RF OM or delegate informs RF CFO	CFO signs
Stock certificate or other equity instrument sent to RF Finance Office certified mail return receipt requested or other method for which tracking and signature are required.	RF OM or delegate	RF Finance Office, Attn: Senior Director Treasury 35 State Street Albany, NY 12207-2826

Agreement conveying EILP to RF is active		Many years may pass between this step 10 and the subsequent steps
Determination is made to liquidate campus portion of equity	RF OM makes determination; RF Director of New Ventures is notified of decision by RF OM, CFO executes stock certificates	

Definitions

Equity in Lieu of Payment ("ELIP") - equity in a third-party company in an amount of no greater than a twenty percent (20%) ownership interest in the subject entity which was acquired by the RF through its support of innovation objectives pursuant to a License Agreement or through the Incubator Programs and the subject EILP was obtained pursuant to the RF's standard forms linked in the RF's Equity Administration Policy. For the avoidance of doubt, if the RF will own greater than a twenty percent (20%) ownership interest in the subject entity, or otherwise be involved in the management of the day-to-day operations of the subject entity, such equity interest will not be deemed EILP Equity for purposes of this policy and the campus shall seek approval for such arrangement pursuant to the RF's Joint Venture Policy.

License Agreements – An agreement pursuant to which the RF grants a third-party the right or permission to use the RF's intellectual property, typically in return for a set royalty such as upfront payments, minimum payments, royalties based on a percentage of net sales and/or termination payments.

Incubator Programs – Programs housed within campus affiliated or controlled facilities which enable the support of new and growing companies by providing a suite of programs and services, including without limitation the SUNY established incubators throughout the system which provide growth-oriented companies essential business incubation services and access to industry-specific development resources through its connection to SUNY and SUNY's academic and programmatic resources.

Related Information

[Equity Administration Policy](#)

[Equity Administration Guidelines](#)

[Distribution of Royalty/Commercialization Income](#)

[Joint Venture Policy](#)

[Joint Venture Guidelines](#)

[Responsibility for Losses Policy](#)

[SUNY Patents and Inventions Policy](#)

Forms

[Hold Harmless Letter Template](#)

[Inventor Letter Template](#)

[RF Exclusive License Agreement Template with Equity Alternatives](#)

[RF Incubator Client Agreement Template with Equity Alternatives](#)

Change History

Date	Summary of Change
July 6, 2020	Updated Function
March 2, 2017	Updated language and process for RF withholding equity upon receipt consistent with the revised Patent and Inventions Policy.
September 10, 2015	New Document

Feedback

Was this document clear and easy to follow? Please send your feedback to webfeedback@rfsuny.org.

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