

Consulting

Consulting for and Equity Ownership in Start-Up and Other Private Companies

Scope and Purpose

HHMI believes that start-up companies can play an important role in translating basic research discoveries made in HHMI and other academic laboratories into effective therapies and diagnostic tools. For this reason, HHMI allows its laboratory heads, i.e., HHMI Investigators and Freeman Hrabowski Scholars at HHMI's host-based sites, and Senior Group Leaders, Group Leaders and Fellows at HHMI's Janelia Research Campus ("Janelia"), to found companies and consult for them. A laboratory head who is or will be consulting for a start-up company is sometimes referred to in this policy as a "Consultant."

For purposes of this policy, the terms "start-up" or "start-up company" generally refer to a private company created to commercialize a discovery initially made in an academic laboratory. The terms also include any company whose equity securities are not publicly-traded on a securities exchange, regardless of how long the company has been in existence.

This policy is intended to balance HHMI's institutional interest in the integrity and independence of its research with its interest in the effective application of research results for the benefit of humanity. A laboratory head's relationship with and services to a start-up company may be very different from the relationship and services associated with other types of consulting. For example, the range of services that a Consultant might provide in the initial stages of a start-up, such as providing assistance in securing financing, identifying key personnel, developing business plans, etc., may be broader than those of a laboratory head providing services to a more established company. Also, when compared with consulting for an established company, cash remuneration may be less when consulting for a start-up but the Consultant may be more likely to receive a greater equity stake. Finally, if the start-up is developed around technology invented by a Consultant, the Consultant likely will have a heightened interest in advancing the company and the invention. All of these factors can increase the potential for conflicts of interest, or the appearance of conflicts of interest, between the laboratory head's HHMI research and their activities in connection with the start-up. For these reasons, HHMI has developed the following special rules applicable to consulting for, and equity ownership in, start-up companies.

Policy

Service as a Founder is Consulting

As explained in [HHMI's Consulting for Companies – General Policy](#), HHMI considers consulting activities to include nearly any service on behalf of a company. Accordingly, service as a founder of a start-up company constitutes consulting, and is subject to all of the requirements of [HHMI's Consulting for Companies – General Policy](#) as well as the requirements of this policy. In addition, if any other HHMI policies affect ownership of equity in a company by an HHMI laboratory head, such as [HHMI's policy on Human Subjects Research](#), the more restrictive policy applies.

Conflicts of Interest

Before approving a start-up proposal, HHMI scientific management must be satisfied that a laboratory head's relationship with the company is not likely to compromise the integrity or independence of the laboratory head's HHMI research. HHMI therefore carefully considers the relationship between the laboratory head's HHMI research and the start-up company's scientific program. In addition, from soon after the company's inception, the start-up must have individuals other than the HHMI founder acting as its representatives and taking the steps needed to transform the company into an operating business. Consistent with [HHMI's Consulting for Companies – General Policy](#), the HHMI founder may not function, or be identified in corporate documents, as an officer of the company. HHMI considers requests to serve as a member of a company's board of directors on a case-by-case basis, taking into account various factors as described in [HHMI's policy on Service as a Member of a Company's Board of Directors](#); ordinarily, service on the board of directors of a company founded by the laboratory head is not approved.

Ownership of an Equity Interest

In general, in determining a Consultant's equity ownership in a company, HHMI applies federal securities laws and regulations relating to beneficial ownership, regardless of whether the company is a private or public company. Specifically, HHMI considers a Consultant to own shares of a company if the Consultant would be considered a beneficial owner of the shares under United States Securities and Exchange Commission (SEC) Rule 13d-3 (Determination of Beneficial Ownership) under the Securities Exchange Act of 1934, as amended, as determined by HHMI. For example, a Consultant will be considered to own shares they own directly as well as indirect holdings, such as shares held by a trust or a partnership of which the Consultant is a beneficiary or partner and shares that could be acquired through the exercise of options or warrants held by them if the options or warrants are exercisable within 60 days of the calculation date. In addition, the consulting scientist also is treated as owning any shares beneficially owned by the consulting scientist's immediate family members (spouse and children sharing the same household). HHMI expects that start-up companies will provide information to HHMI about the Consultant's equity ownership upon request.

Equity Ownership Limits

[HHMI's Consulting for Companies – General Policy](#) provides that a Consultant is permitted to hold an equity interest, such as stock or stock options, in a company for which they consult unless the interest constitutes a “significant equity interest.” In general, HHMI considers ownership of more than 5 percent of the equity of a company to constitute a significant equity interest in the company. There is typically a period of time, however, when a start-up company has little or no market value or when the market value of the company’s stock is difficult to determine. Requiring an HHMI founder to reduce their ownership to no more than 5 percent of a company’s equity during this period could discourage laboratory heads from becoming involved with start-up companies or unnecessarily disadvantage HHMI laboratory heads relative to other founders who are not HHMI employees in circumstances that otherwise do not present conflict of interest concerns. For these reasons, in the case of a start-up company, HHMI generally postpones application of the 5 percent stock ownership limit until occurrence of an event that provides a more objective means of determining the market value of the company’s equity.

Equity Ownership Before a Significant Corporate Event. For one year from the date a Consultant first acquires ownership of any securities of the start-up company, unless a Significant Corporate Event, as defined below, occurs, there is no upper limit on the amount of equity the Consultant may hold in the company. After the first year of equity ownership and until the occurrence of a Significant Corporate Event, a Consultant’s equity interest in a start-up company must be reduced to less than a “controlling interest,” as defined below, unless HHMI’s Vice President and Chief Scientific Officer (or, in the case of a Janelia laboratory head, the Executive Director of Janelia) has concluded on the basis of information submitted by the Consultant that there are compelling reasons why continued ownership of a controlling interest in the start-up company should be permitted beyond the one-year period. Requests for a temporary waiver of HHMI’s limit on equity ownership in a start-up after the initial year must be submitted in writing to HHMI’s Vice President and Chief Scientific Officer or the Executive Director of Janelia, as applicable, at least 30 days prior to the end of the company’s first year.

For purposes of this policy, a “controlling interest” means that the Consultant:

- (i) has the power, directly or indirectly through equity ownership or voting power, to appoint or remove all or a majority of the company’s board of directors or other governing body;
- (ii) has beneficial ownership in, or voting rights with respect to, 50 percent or more of the company’s voting securities (or 50 percent or more of any class of the company’s voting securities);
or
- (iii) otherwise has sufficient legal rights to control or assert significant influence over the management or operations of the company, including approval or veto rights over corporate decisions.

HHMI's Office of the General Counsel will review information about stock ownership obtained from the Consultant and the company to determine whether a Consultant has a controlling interest in the start-up.

HHMI expects that in most cases, a Consultant's equity will be diluted to less than a controlling interest during the one-year period following first equity ownership as the company attracts investors. Prior to the end of the one-year period, HHMI will contact the Consultant to review the status of the company, the Consultant's equity ownership position, and, if necessary, plans for reducing their equity ownership in order to comply with HHMI's ownership requirements or to request a temporary waiver of HHMI's limit on equity ownership. HHMI encourages laboratory heads who are interested in forming a company to consider carefully the prospects for obtaining financing, and the timing of such financing, before forming the company.

Equity Ownership Following a Significant Corporate Event. HHMI's 5 percent equity-ownership limit applies in the case of an equity interest in a start-up company twelve months after the earliest to occur of any of the following (each a "Significant Corporate Event"):

- (i) a company's securities becoming publicly traded (e.g., as a result of an initial public offering by the company of shares of its stock);
- (ii) a change in control of the company (e.g., stock acquisitions, reorganizations, mergers, and consolidations or other business transactions that change the majority ownership of the company but do not include sales of stock for the purpose of raising capital for the company); or
- (iii) a determination by HHMI that one or more transactions similar in significance to those described in clauses (i) or (ii) have occurred.

A Consultant is required to keep their [HHMI attorney](#) apprised of Significant Corporate Events affecting the company. If, after a Significant Corporate Event, a Consultant's ownership interest in the company is more than 5 percent of the equity of the company, the Consultant should contact their [HHMI attorney](#) and [Scientific Officer](#) to review the Significant Corporate Event and the Consultant's plans for reducing their equity ownership to no more than 5 percent of the company's equity within 12 months of the Significant Corporate Event. HHMI expects that a Consultant will come into compliance with this policy during this 12-month period. A Consultant is responsible for assuring that their equity ownership complies at all times with HHMI's policies. Consultants should refer to [HHMI's Insider Trading Policy](#) for information regarding disclosure of inside information.

Reporting to HHMI

As described in greater detail in the [Start-Up Handbook](#), a laboratory head is required to submit for review by HHMI's Office of the General Counsel and scientific management the start-up's proposed consulting agreement, business plan, capitalization table, and, if applicable, the terms of any licenses by the company of inventions made in the Consultant's HHMI laboratory. In addition, laboratory heads are required to disclose potential conflicts of interest as part of their initial request for HHMI review of a start-up proposal, including disclosure of any matters that are required to be

disclosed to the Consultant's host institution, and any restrictions imposed on the Consultant or their laboratory by the host institution.

Following approval of a proposed consulting relationship with a start-up company, a Consultant who owns a controlling interest in their start-up company must report to the HHMI Office of the General Counsel annually on, among other things, the progress of the company in pursuing its business plan, the relationship between research occurring in the Consultant's HHMI laboratory and the company's scientific program, and ongoing equity ownership by the Consultant. In all cases, a Consultant must report on a timely basis any Significant Corporate Events affecting the company and any changes in circumstances that could give rise to conflict of interest concerns, including any matters the Consultant is required to report to their host institution. As noted above, Consultants should refer to [HHMI's Insider Trading Policy](#), for information regarding use and disclosure of confidential information and insider trading.

Throughout a consulting relationship, HHMI retains discretion to require the Consultant to take steps to HHMI's satisfaction to resolve any conflicts of interests or other issues arising under HHMI's policies posed by the consulting relationship.

Equity Ownership as an Investor Only

A laboratory head who is not a founder of a start-up company, and who does not consult for the company in any way (i.e., formally or informally), is not subject to this policy's limits on equity ownership in the company.

Procedures Relating to Start-Up Companies

- Laboratory heads at HHMI's host sites who are contemplating involvement with a start-up company are strongly encouraged to read the [Start-Up Handbook](#) and to contact the [HHMI attorney](#) responsible for their site to discuss their plans. Janelia Senior Group Leaders, Group Leaders, Fellows, and Senior Scientists should discuss their plans with the Janelia Director of Innovations and External Relations, who in turn will discuss the proposal with the Chief of Janelia Scientific Operations and Programs or Executive Director and the HHMI attorney responsible for Janelia.

HHMI's review of start-up documentation is more involved than the review of other consulting relationships, and thus may take more time to complete than less complicated consulting relationships.

Related Procedures, Forms and Policies

- [Consulting for Companies – General Policy](#)
- [Human Subjects Research](#)
- [Service as a Member of a Company's Board of Directors](#)
- [Insider Trading Policy](#)
- [Start-Up Handbook](#)

- Start-Up Questionnaire on the [HHMI Science Portal](#)
- [Model Consulting Agreement](#)
- [Uniform Consulting Agreement Provisions](#)

Contact

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Issued by: Science and Janelia
Issue Date: 05/01/2015
Last Reviewed: 1/25/2024
Last Updated: 9/1/2023