

# Research Policies

## Consulting

### Guidelines for Calculating Equity Ownership (SC-530A)

These guidelines describe in detail how the equity ownership of an HHMI researcher in a company is to be calculated for purposes of HHMI's policies on consulting.

Please note that these guidelines are designed to answer highly technical questions arising under HHMI's policies on consulting. For more general information on this issue, please refer to [HHMI's policy on Calculation of Equity Ownership in Companies](#).

For ease of reference, an HHMI researcher to whom this policy applies is referred to in this policy as a "Consultant".

### In General

In general, a Consultant is considered to own an equity security (such as shares of common stock or preferred stock) if he or she, directly or indirectly, has or shares the ability to vote, dispose of or profit from the security or to direct such vote, disposition or profit, or has the right to acquire any such interest at any time.

In calculating ownership, HHMI is guided by the U.S. federal securities laws for purposes of defining what constitutes an "equity security" and what constitutes ownership of an equity security. To carry out the purposes of its consulting policies, however, HHMI has modified and supplemented these rules. For example, HHMI will not count unexercised options held by other parties in calculating the ownership interest of a Consultant but will consider all of the Consultant's unexercised options (regardless of vesting date) in the calculation. This and other modifications will likely produce a higher percentage ownership calculation than would be determined by strictly following the U.S. federal securities laws.

### Determining the Number of Shares Owned

For purposes of HHMI's policies on consulting, a Consultant will be considered to own the following shares:

1. Shares of any class of equity securities with respect to which the Consultant would be deemed to hold beneficial ownership, directly or indirectly, under Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), if the Exchange Act were to apply, and, in addition, any shares with respect to which the Consultant has the right to acquire beneficial ownership at any time.

This includes any shares with respect to which the Consultant has or shares the power to vote or direct the voting of the shares or the power to dispose or to direct the disposition of the shares. The power to vote or dispose of shares can arise from ownership or through any contract, arrangement, understanding, or other similar relationships.

The inclusion of shares with respect to which the Consultant has the right to acquire beneficial ownership (i.e., the power to vote or dispose of the shares) at any time expands the method of determining ownership under the Exchange Act, which generally treats as beneficially owned only shares that a person has the right to acquire within 60 days. The right to acquire beneficial ownership may be held through any of the following mechanisms:

- through the exercise of an option, warrant or other right;
  - through the conversion of a security;
  - pursuant to the power to revoke or amend, or pursuant to the automatic termination of, a trust, discretionary account, or similar arrangement;
  - upon the occurrence of any contingent or future events, including dilutive events (even if the Consultant is entitled only to increase his or her ownership back to the 5% level); or
  - upon the occurrence of any antidilutive or similar provision other than as a result of stock splits, stock dividends and recapitalizations.
2. Shares of any class of equity securities with respect to which the Consultant would be deemed to hold a direct or indirect pecuniary interest under Section 16(a)(2) of the Exchange Act, if the Exchange Act were to apply, including any shares owned by members of the Consultant's immediate family, or in trust if the Consultant or any member of his or her immediate family is the trustee, beneficiary or settlor of the trust.

This includes any shares of any class of equity securities with respect to which the Consultant has the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the securities.

This also includes any shares of any class of equity securities held by members of a Consultant's immediate family, whether or not they live with the Consultant. This rule expands the definition of immediate family under the Exchange Act, which attributes ownership of only those shares held by immediate family members that share the same household. For purposes of these policies, the following are members of a person's immediate family: child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law and sister-in-law. HHMI, in its sole discretion, may waive the application of this rule for certain members of a Consultant's immediate family who do not share a household with the Consultant. Such waivers will be granted only in exceptional cases and will require, at a minimum, that the family member have an independent basis for owning the securities. Waivers will not be allowed under any circumstances for a Consultant's spouse, child or stepchild, grandchild, parent or stepparent, or grandparent.

The inclusion of shares of any class of equity securities held in trust if the Consultant or a member of his or her immediate family is a trustee, beneficiary or settlor modifies the comparable provision under the Exchange Act, which limits the shares that are attributed to trustees, beneficiaries and settlors in certain circumstances.

3. Shares of any class of equity securities that are held in an escrow or similar arrangement if the Consultant or any member of his or her immediate family at any time had or will have the right to vote or direct the voting of the shares, to dispose or direct the disposition of the shares (including a disposition to charity) or to obtain any direct or indirect pecuniary interest from the shares.

This includes any shares of any class of equity securities that are deposited into an escrow by or on behalf of the Consultant. This also includes all shares placed in an escrow if the Consultant at any time possessed or possesses any power or influence over shares placed in the escrow, or the manner of disposition of the shares.

This also includes all shares given or otherwise transferred to a host institution or another entity for the benefit of the Consultant's laboratory or department. However, it does not include equity received by a host institution pursuant to a license of technology, where under the host institution's standard royalty-sharing policies the Consultant's laboratory or department will ultimately receive a share of the proceeds of sale of such securities.

4. That portion of any shares of any class of equity securities that are issued pursuant to a license of technology that constitutes the Consultant's share as an inventor of the licensed technology, whether or not the shares are issued to the Consultant or held by his or her host institution or (in the case of Janelia) by HHMI, and whether or not set aside or otherwise earmarked as such by the host institution or HHMI.

## Calculating Equity Ownership

To calculate the percentage of the equity a Consultant owns in a company, for each class of securities, divide (i) the number of shares of the class of securities owned by the Consultant, directly or indirectly, as determined above (including shares deemed by HHMI under the rules above to be owned by the Consultant based on options, warrants, conversion privileges or other similar mechanisms), by (ii) the sum of (x) all shares of the class that are issued and outstanding and not held as treasury shares and (y) all shares of the class attributable to the Consultant under clause (i) above that currently are not outstanding.

Please note that shares that are not outstanding but are associated with options, warrants, and similar instruments held by people other than the Consultant, directly or indirectly, are not included in the denominator; only issued and outstanding shares that are held by others are so included.

Many companies have more than one class of securities, e.g., one class of common stock and one or more classes or series of preferred stock. Often a class or series of securities is convertible into another class of securities under certain conditions. For ease of reference, a class of securities which is presently, or could become, convertible into another class of securities (for example, convertible preferred stock) is referred to in the discussion below as the "Convertible Class" and the class of securities into which the Convertible Class can be converted (for example, common stock) is referred to in the discussion below as the "Relevant Class".

As a general rule, when calculating the equity ownership percentage for the Consultant of the Relevant Class, HHMI will not count in the denominator shares of the Relevant Class into which the Convertible Class can be converted that are held by people other than the Consultant since those shares of stock of the Relevant Class are not outstanding at the time of the calculation. HHMI will include such shares, however, in the following situation.

- all shares of the Convertible Class are immediately and fully convertible into shares of the Relevant Class at the option of the holder either on a one-for-one basis or any other basis for which a conversion calculation may be determined at any time based on instructions set forth in the company's charter; and
- the Convertible Class votes with the Relevant Class on all corporate matters or the Consultant has agreed in advance to vote his or her shares of the Relevant Class proportionately with other holders of the Relevant Class on any matters in which the shareholders of the Relevant Class vote separately from the Convertible Class (except where the applicable state corporate law requires the holders of the Relevant Class to vote as a separate class).

Assuming the preceding conditions are satisfied, to calculate the equity ownership percentage of a Consultant in a company, for each Relevant Class, divide (i) the number of shares of the

Relevant Class owned by the Consultant, as determined using these guidelines, plus the number of shares of the Relevant Class into which shares of the Convertible Class owned by the Consultant, as determined using these guidelines, can be converted (on an “as converted” basis), by (ii) the sum of (x) all shares of the Relevant Class that are issued and outstanding and not held as treasury shares, plus all shares of the Relevant Class into which shares of the Convertible Class that are issued and outstanding (and not held as treasury shares) can be converted (on an “as converted” basis) and (y) all shares of the Relevant Class otherwise attributable to the Consultant under clause (i) above that currently are not outstanding.

## Examples

- A. Company has a class of common stock outstanding. Company issues Investigator 50 shares of common stock. As a result there are 1,000 shares outstanding. Investigator owns 5% of the Company's equity.

Calculation: Common Stock  $50/1000 = 5\%$

- B. Company has a class of common stock outstanding. Company issues Investigator 50 shares of common stock. At the request of the Investigator, Company places 25 shares of common stock into an escrow to be held for the benefit of a charity; an independent escrow agent has sole power to vote and dispose of the shares. Company issues 10 shares to Investigator's spouse, who is employed by the Company. As a result there are 1,000 shares outstanding. Investigator owns 8.5% of the Company's equity.

Calculation: Common Stock  $(50+25+10)/1000 = 8.5\%$

- C. Company has a class of common stock outstanding, a class of shares of (non-convertible) preferred stock outstanding, and an option plan covering 500 shares of common stock. Company issues Investigator 50 shares of common stock, 10 shares of preferred stock and options to purchase 25 shares of common stock with 5 shares vesting in each of the next 5 years. As a result there are 1,000 shares of common stock and 500 shares of preferred stock outstanding, plus 500 shares of common stock reserved for the option plan. Investigator owns 7.32% of Company's common equity and 2% of the Company's preferred equity.

Calculation: Common Stock  $(50+25)/(1000+25) = 7.32\%$

Preferred Stock  $10/500 = 2\%$

- D. Company has a class of common stock outstanding and a class of preferred stock outstanding that votes with the common stock on all corporate matters and converts on a one-to-one basis into common stock. Company issues Investigator 50 shares of common stock and 10 shares of preferred stock. As a result the Company has 1,000 shares of common stock and 500 shares of preferred stock outstanding. Investigator owns 4% of the Company's common equity and 2% of the Company's preferred equity.

Calculation: Common Stock  $(50+10)/(1000+500) = 4\%$

Preferred Stock  $10/500 = 2\%$

- E. Company has a class of common stock outstanding and a class of preferred stock outstanding that votes with the common stock on all corporate matters and converts on a one-to-one basis into common stock. Company issues Investigator 50 shares of common stock and no shares of preferred stock. Company issues host institution 100 shares of common stock under a license of technology invented solely by Investigator.

As a result the Company has 1,000 shares of common stock and 500 shares of preferred stock outstanding. Under host policies, inventors are entitled to receive 25% of any royalties received. Investigator owns 5% of the Company's common equity and no preferred stock.

Calculation: Common Stock  $(50+25)/(1000+500) = 5\%$

Preferred Stock  $0/500 = 0\%$

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