

Agenda
Board of Regents
Emergency Meeting of the Full Board
Friday, July 27, 2012; 10:30 a.m. – 11:30 a.m.
AUDIO CONFERENCE
1-800-893-8850 / Pin 4054501

I. Call to Order

II. Adoption of Agenda

MOTION

“The Board of Regents adopts the agenda as presented.

I. Call to Order

II. Adoption of Agenda

III. Resolution Authorizing Creation of Subsidiary Entities to Commercialize Research

IV. Adjourn

This motion is effective July 27, 2012.”

III. Resolution Authorizing Creation of Subsidiary Entities to Commercialize Research

References 1 & 2

The President recommends that:

MOTION

“The Board of Regents adopts the resolution authorizing creation of subsidiary entities to commercialize UA research as presented. This motion is effective July 27, 2012.”

WHEREAS, the Board of Regents finds that it is in the interest of the public and the University of Alaska (the “University”) to commercialize intellectual property resulting from research conducted at and under the supervision of the University, and to do so through a variety of means, including without limitation, for-profit subsidiaries of the University.

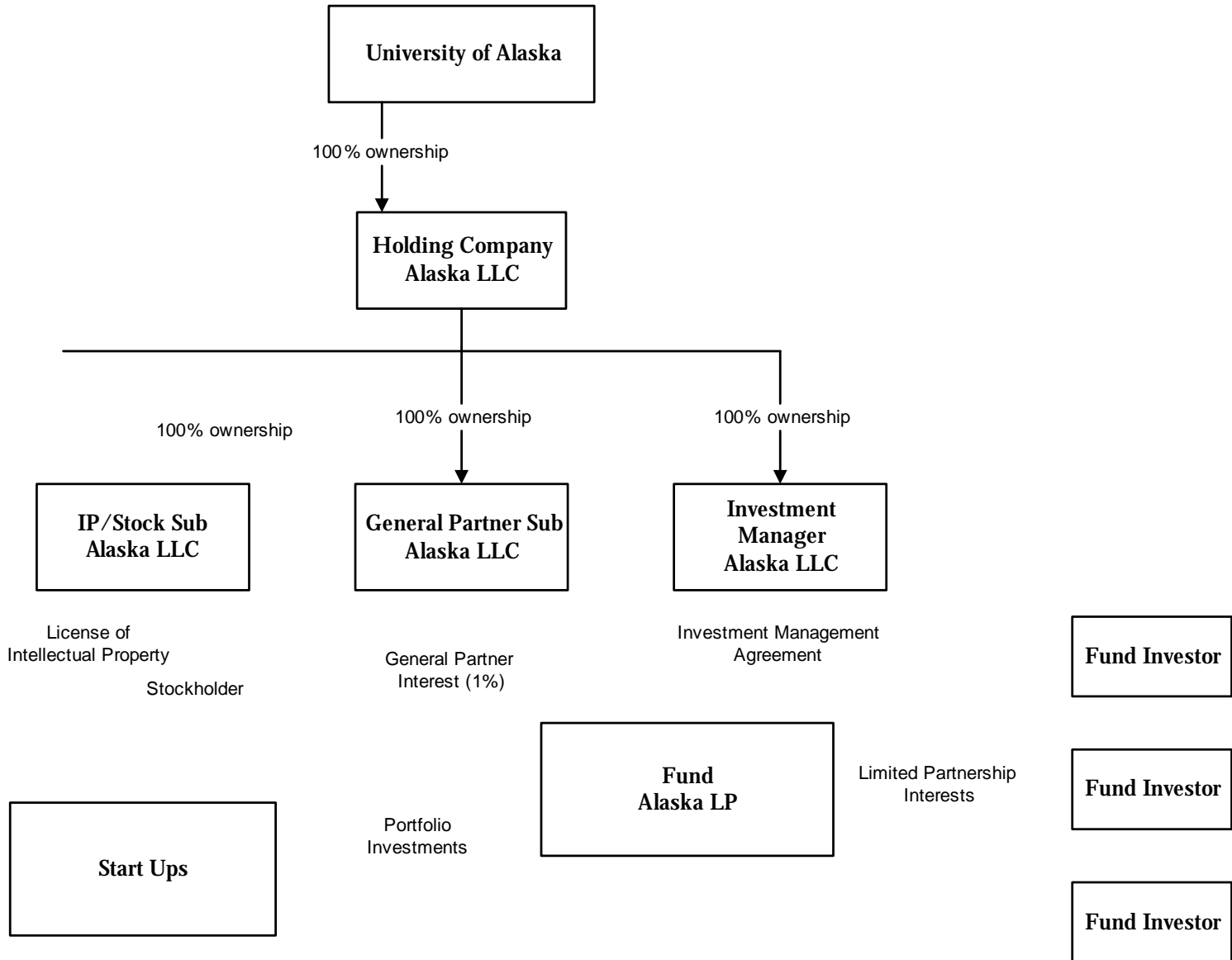
NOW, THEREFORE, BE IT RESOLVED, that pursuant to AS 14.40.458, the Board of Regents authorizes the president, and through the president, the chancellor and chancellor’s designees (the “Authorized Persons”), (i) to form on behalf of the University, a wholly-owned for-profit holding company (for ease of reference, hereafter “Hold Co”), for the purpose of holding and commercializing such intellectual property rights as they deem necessary and appropriate, and to manage Hold Co and delegate such authorities and duties as may be necessary and appropriate, subject to any approval rights over any matters that may be expressly reserved for the Board of Regents in Hold Co’s operating agreement, (ii) to cause Hold Co to enter into transactions and to form and manage subsidiaries and such other entities, and to cause such subsidiaries and other entities to enter into transactions as the Authorized Persons deem necessary and appropriate and consistent with the functions and purposes set forth in the

Agenda
Emergency Meeting of the Full Board

Proposed Structure of Technology Commercialization and Sponsorship of Private Investment Fund

**University of Alaska
Anchorage Project**

SPATON



Holding Company and Subsidiaries—Corporate Separation

Top-level holding company wholly-owned by UA

Holding Company wholly-owns underlying subsidiaries

Purposes:

- o The IP/Stock Subsidiary will hold the intellectual property rights pursuant to a license from Holding Company and any stock received from the start-up ventures
- o The intellectual property rights and the stock will be housed in the same entity and accordingly the assets would be available to satisfy any debts, liabilities, obligations, and risks associated with licensing the intellectual property and holding the stock
- o The contractual agreements will be drafted to minimize, to the extent possible, the exposure of the intellectual property assets to potential claims or losses

Corporate separateness and formalities must be respected and practiced on a consistent and thorough basis to reduce or mitigate risk of a court looking through the structure and treating UA as the entity actually conducting the function, rather than a subsidiary or subsidiaries (also known as “piercing the corporate veil”).

Each entity should:

- o have its own governing documents
- o take its own corporate actions
- o keep its own corporate books and records
- o operate within its own defined business areas
- o have at least some board members not in common with the other boards

Unrelated Business Taxable Income

Income to the University of Alaska (“UA”) is not generally subject to federal income tax, except for income generated from unrelated trades or businesses, which is taxed at the highest corporate income tax rates

Unrelated business income tax (“UBIT”) is imposed on gross income received by UA from an unrelated trade or business, less directly related expenses

Income is taxable if

- o derived from a trade or business
- o the trade or business is regularly carried on
- o the regularly carried on trade or business is not related to UA’s charitable, educational, scientific, literary, etc. purposes

Whether an activity is an unrelated trade or business is determined based on all the **facts and circumstances**

Unrelated Business Taxable Income (cont.)

Although exceptions may apply, certain types of income are not subject to UBIT, including

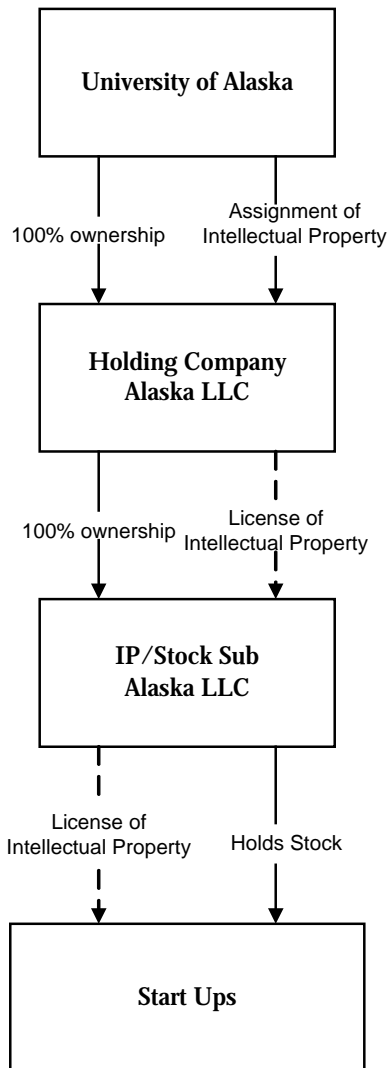
- o dividends
- o interest
- o royalties
- o rents
- o capital gains
- o income derived from research

Income may be subject to UBIT even if it falls into one of the above categories in certain circumstances—for example:

- o In certain cases if the income is derived from debt-financed property
- o certain types of income from controlled subsidiaries if the subsidiary is able to deduct such amounts and thereby reduce its taxable income, or if the payment would allow the subsidiary to take a loss that may be used against income earned by it in subsequent years

Income derived from research activities of a university is not generally subject to UBIT but to qualify, such research must be conducted by the university and may not be conducted through a separately incorporated entity

- o Research conducted by a single-member limited liability company that is treated as a disregarded entity and owned by a university will be treated as conducted by the university



IP/Stock Subsidiary

The IP/Stock Subsidiary holds the intellectual property rights (issued patents, trade secrets, and patent applications) pursuant to a license from Holding Company and licenses such property to the various start-up companies and also holds stock ownership interest of the start up-companies in exchange for the contribution of such licenses

The intellectual property rights and the stock are being held in one corporation in order to ease the administrative costs and burdens

The easing of the administrative costs and burdens will result in all of the corporation's assets being subject to any claims or losses

To the extent possible, the contractual agreements for the intellectual property will try to reduce and minimize such risks

General Partner and Investment Manager Subsidiaries

The General Partner Subsidiary will serve as the general partner of the Private Investment Fund (“Fund”) and receive a share of the profit from investments (“carried interest”)

The Investment Manager Subsidiary will serve as the investment manager of the Fund and receive a management fee

Purposes for forming separate entities to serve as general partner and investment manager of the Fund:

- o taxation
 - carried interest currently categorized as capital gains (although there are efforts in Congress to have carried interest treated as ordinary income)
 - management fees categorized as ordinary income

General Partner Subsidiary—Purpose and Existence

The General Partner Subsidiary should be a single purpose vehicle dedicated solely to the Fund that would:

- o wind down its affairs following liquidation and wind down of the Fund (a new General Partner Subsidiary should be established if a successor investment fund is established)
- o

Investment Manager Subsidiary—Purpose and Existence

The Investment Manager Subsidiary serves as investment manager of the Fund

- o has no ownership interest whatsoever in the Fund
- o enters into an investment management agreement with the Fund under which it will provide investment management and advisory services to the Fund
- o receives management fees from the Fund

does not have general liability for the debts and obligations of the Fund since there is no ownership interest in the Fund (unlike the General Partner Subsidiary)

does not need to wind down when the Fund and the General Partner Subsidiary are wound down, so long as other business opportunities exist for continued operation

may, if successful, serve as an operating business and exist beyond the life of

8. Name and Mailing Address of the Member. The name and the mailing address of the Member are as follows:

Name

University of Alaska

Address

3211 Providence Drive
Anchorage, Alaska 99508

unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

24. Entire Agreement. This Agreement constitutes the entire agreement of the Member with respect to the subject matter hereof.

25. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Alaska (without regard to conflict of laws principles thereof), and all rights and remedies shall be governed by such laws.

26. Amendments. This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Member. At least 30 calendar days in advance of any such modification, alteration, supplement or amendment, the Company shall provide written notice thereof and a brief explanation of same to the Board of Regents

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, has duly executed this Agreement as of the date first written above.

UNIVERSITY OF ALASKA

Name:

Title:

Schedule A

Name

Capital Contribution