

October 16th, 2017

MEMORANDUM

FOR: University of Massachusetts – All Campuses
FROM: Office of the General Counsel
SUBJECT: Investor Status of the University

This memo addresses a question related to the authority and ability of the University of Massachusetts (including the system office and all campuses, departments, units, programs and offices, collectively “University”) to offer or participate in certain offerings exempt from registration, including to present itself, and enter into agreements with, companies, organizations, and/or investors for the purpose of funding new entities (start-ups or otherwise). Specifically, is the University an “Accredited Investor?”

It is the legal opinion of this office that the University does not meet the definition of an “Accredited Investor” as defined by the Code of Federal Regulations §230.501(a)¹ (“C.F.R. 230”) and as used in Rule 501(a) of Regulation D promulgated under the Securities Act of the United States of America.

The University is an agency of the Commonwealth of Massachusetts organized under Section 75 of the Massachusetts General Laws.² The University claims federal tax-exempt status under Section 115 of the United States Internal Revenue Code (“I.R.C.”)³ and thus is not an “organization described in section 501(c)(3) of the I.R.C., a corporation, Massachusetts or similar business trust, or partnership” as defined by C.F.R. 230.

However, in our opinion the University may *represent* and agree to the following statements, after confirmation and affirmation through campus diligence at the time of each representation, that the University:

- Is an instrumentality of the Commonwealth of Massachusetts and claims federal income tax-exempt status under Section 115 of the I.R.C.;
- Has total assets in excess of five million dollars (\$5,000,000.⁰⁰);
- Considers itself to have sufficient knowledge and experience in financial and business matters to evaluate investments in unregistered securities; and
- Is not organized for the specific purpose of acquiring the securities offered.

It is our intention that such representations, will give any organization sufficient information and comfort to make a favorable assessment of the relative risk associated with entering into any ventures described herein.

¹ 17 C.F.R. §230.501 - <https://www.gpo.gov/fdsys/granule/CFR-2011-title17-vol2/CFR-2011-title17-vol2-sec230-501>.

² Chapter 75 Massachusetts General Law - <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter75>.

³ 26 I.R.C. §115 - <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/pdf/USCODE-2011-title26-subtitleA-chap1-subchapB-partIII-sec115.pdf>.