



Founder Follies



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Jeff serves as general counsel to several emerging companies in the life-sciences and information-technology industries and also represents prominent venture capital funds.

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Alex concentrates his practice on representing strategic buyers, such as EMC Corporation and Alere, Inc., in mergers and acquisitions.

Alex also advises early stage, high-tech and life science companies on a broad range of matters including venture capital financings, technology licensing and joint ventures.

Alex serves as outside general counsel to 38 Studios, LLC and Good Start Genetics, Inc.

HBS Teams that became Foley Hoag Clients

- Cleod9, Inc.
- Done. Corporation
- OsComp Systems, Inc.
- Birchbox
- YouTea!
- KartMe, Inc.
- Good Start Genetics, Inc.
- EyeView
- LeanForward Media
- ThredUp, Inc.
- iShoe, Inc.
- Clear Suppliers Corporation
- Vision Green
- ZEFER
- Elective Medical Lending, Inc.
- Excelegrade, Inc.
- Zumper, Inc.
- Palliative Care of America
- Shokay International
- EGG-energy Inc.
- giiv, Inc.
- Unite for Health
- Mountains for Miracles
- Souktel
- Charitable Donations Group
- C3 BioEnergy
- Living Power Systems
- Uplift
- Extend Fertility
- Physica Solutions

Overview: Typical Mistakes Made by Founders

- Careless selection of advisors
- Wrong choice of entity
- Casual distribution of stock
- Employment law violations
- Casual protection of IP
- Too greedy too early
- Too complex too early
- Overdoing the business plan
- Cold calling VCs
- Failure to comply with university policies

Careless Selection of Advisors

- Lawyers: Practice area and industry experience is essential
- Finders/Brokers: Can attract regulators and scare away VCs
- Scientific Advisory Board: Validation often comes with a price
- Incubators and Vendors: Often over-charge and under-deliver

Wrong Choice of Entity

- Corporation v. Limited Liability Company (LLC)
- LLCs offer too much flexibility
- Jurisdiction: Massachusetts v. Delaware

Casual Distribution of Stock (Overview)

- “Founders’ Stock”
- Federal and state securities laws
- Tax considerations

“Founders’ Stock”

- Founders’ Stock = Common Stock
- “Forgotten Founder”
- Use “reverse vesting” – even for yourself
- Avoid “percentages” – speak in terms of shares

Securities Laws

- Securities Act of 1933; state “Blue Sky” laws
- No sale of securities without registration, *unless* there is an exemption available
- Rule 10b-5 applies to “private placements”

Tax Considerations

- Issue founders' stock early to avoid cheap stock problem
- Don't forget to file 83(b) election

Employment Law Considerations

- No employees until you can pay at least minimum wage
- Employee/Contractor/Intern Classification
- Deferred Compensation

Casual Protection of IP

- Use nondisclosure agreements, and disclose cautiously
- Employees (and some consultants) should assign inventions
- Avoid risk of loss of patent rights

Too Greedy Too Early

- Entrepreneurs often need lots of help
- Milestones/Tranches: “Take what you can get”
v. smaller increments
- Pre-money valuation isn’t the only important
term in Term Sheet
- Good VCs offer more than money

Too Complex Too Early

- Complexity will scare off investors and drive up transaction costs
- Avoid:
 - Holding company for IP
 - Royalties for consultants
 - Joint or split ownership of IP
- Antidilution protection for early investors

Overdoing the Business Plan

- Executive Summary will usually suffice for seed rounds: *Product, Team, IP, Market, Competition*
- Don't hide weaknesses; recast them as future "Milestones"
- Be careful not to promise future results

Cold Calling VCs

- Who: Be mindful of who specializes in what
- When: Don't try too soon; not necessarily a plus to have signed licenses
- What: 5-page Executive Summary

Failure to Comply with University Policies

- Consulting Agreements: Be mindful of conflicts of interest and IP ownership issues
- Use of students
- Distribution of equity



Questions?

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