



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 Inverness Medical Innovations, Inc., in middle-market mergers and acquisitions.

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

HBS Teams that became Foley Hoag Clients

- YouTea!
- KartMe, Inc.
- Good Start Genetics, Inc.
- EyeView
- LeanForward Media
- ThredUp, Inc.
- iShoe, Inc.
- Clear Suppliers Corporation
- Vision Green
- ZEFER
- Elective Medical Lending, Inc.
- 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
- 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

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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