



Founder Follies

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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

Definition of “Founder”

- No Legal definition of “Founder”
- “Founder’s stock” v. common stock

Careless Selection of Advisors

- Lawyers
 - full service, including corporate, IP, employment and litigation
 - other clients in your industry; universities
 - recognized by VCs and potential “partners”
 - experience with VCs and universities; patent experts
 - introductions; validation
- Finders/Brokers
 - too expensive, often don’t deliver, hard to terminate
 - licensed?
 - alternatives
- Scientific Advisory Board
- Incubators and Vendors

Wrong Choice of Entity

- Corporation v. LLC
- LLCs offer too much flexibility
 - No two are alike
 - Difficult to grant stock options
 - Later conversion will add to transaction costs
- Massachusetts v. Delaware

Casual Distribution of Stock

- Lots of litigation about promises made among founders
- Don't give fully vested shares – even to yourself!!
- Issue founders' stock early
- Be mindful of federal and state securities laws
- Unaccredited investors – including university scientists
- Be cautious with dilution protection
 - terminology
 - promising “percentages”

Casual Protection of IP

- Use NDAs
- Employees (and some consultants) should assign inventions
 - Prior v. future inventions
- Risk loss of patent rights
- Even with NDA, disclose cautiously over time

Too Greedy Too Early

- Scientist entrepreneurs usually have day jobs and will need lots of help
- Use vesting
- “Take what you can get” v. smaller increments
- Valuation isn’t the only important term in Term Sheet
 - antidilution provisions
 - liquidation preferences
 - control: board; veto rights
- Good VCs offer much more than money

Too Complex Too Early

- Complexity will scare off investors and drive up transaction costs
- No holding company for IP
- No royalties for consultants
- No joint or split ownership of IP
- Milestones
- Antidilution protection

Overdoing the Business Plan

- 5-page Executive Summary will usually suffice for seed rounds
 - product
 - team
 - IP protection
 - market
 - competition
- Quality plans take time and are expensive
- Do not hide weaknesses; recast them as future “milestones”
- Be careful not to promise future results

Cold Calling VCs

- Find out who specializes in what
- Need an introduction, or at least drop a name
- Don't try too soon
 - retain a law firm
 - protect IP
 - associate with at least one experienced entrepreneur
- 5-page executive summary
- Not necessarily a plus to have signed licenses

Failure to Comply with University Policies

- Consulting Agreements
 - conflicts of interest
 - IP ownership issues
- Promising the company rights to future inventions
- Use of students
- Distribution of equity



Questions?

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