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Partner,
Co-Chairman of Life Sciences Practice Group
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jquillen@foleyhoag.com

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

Jeff advises clients regarding a wide variety of transactions including venture capital financings, public offerings, mergers and acquisitions, patent licenses and joint ventures.

Jeff has been recognized by PLC, Best Lawyers in America, The Legal 500 and Super Lawyers as an expert in his field.

Alex Aber
Partner,
Co-Chair, Mergers and Acquisitions Practice Group
(617) 832-3028
aaber@foleyhoag.com

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 several venture-backed companies, including Good Start Genetics, Inc. (an HBS- Business Plan Context Finalist)
HBS Teams that became Foley Hoag Clients

- eTransitions
- Cleod9, Inc.
- RallyPoint Networks, Inc.
- 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.

- Vaxess Technologies
- 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
Overview (or just watch *The Social Network*)

- *What, When and How* of “Founders’ Stock”
- Securities Laws
- Tax Matters
- Dilution
- Employment Law Considerations
What is “Founders’ Stock”?

- (Almost) Always **Common Stock**
- Preferred Stock (e.g., “Class F Preferred”, “Series FF Preferred”)
When Should Founders’ Stock be Issued?

- Short Answer: Early
  - Avoid the “Forgotten Founder” Problem (see Winklevoss Twins)
  - Avoid the “Cheap Stock” Problem (see Tax Matter Discussion below)
How should Founders’ Stock be Issued?

- Always Subject to “Reverse Vesting” – even for yourself
  - Company Buyback Right
  - Founder Buyback Right

- Avoid percentages – speak in terms of shares
  - Denominator is a moving target
  - Percentages imply anti-dilution

- Consider these factors:
  - Past contributions
  - Future contributions (duties and time commitment)
  - Cash compensation (now or future)

- Who can cut off vesting?
# HBS Technologies, Inc.

*Capitalization as of February __, 2014*

## Original Cap Table

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Common Stock</th>
<th>Options</th>
<th>Fully Diluted</th>
<th>% Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Founder</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aldrich</td>
<td>1,500,000</td>
<td>-</td>
<td>1,500,000</td>
<td>30.00%</td>
</tr>
<tr>
<td>Spangler</td>
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<td>-</td>
<td>1,500,000</td>
<td>30.00%</td>
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<tr>
<td>Rock</td>
<td>1,500,000</td>
<td>-</td>
<td>1,500,000</td>
<td>30.00%</td>
</tr>
<tr>
<td><strong>2014 Stock Incentive Plan</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unallocated Option Pool</td>
<td>-</td>
<td>500,000</td>
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<td>10.00%</td>
</tr>
<tr>
<td><strong>Totals:</strong></td>
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<td>5,000,000</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

## Company Buy-Back

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Common Stock</th>
<th>Options</th>
<th>Fully Diluted</th>
<th>% Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Founder</strong></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Aldrich</td>
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<td>42.86%</td>
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<tr>
<td>Rock</td>
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<td>0.00%</td>
</tr>
<tr>
<td><strong>2014 Stock Incentive Plan</strong></td>
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<td></td>
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<tr>
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</tbody>
</table>

## Founder Buy-Back

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Common Stock</th>
<th>Options</th>
<th>Fully Diluted</th>
<th>% Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Founder</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aldrich</td>
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<td>-</td>
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<td>45.00%</td>
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<tr>
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<td>-</td>
<td>2,250,000</td>
<td>45.00%</td>
</tr>
<tr>
<td>Rock</td>
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<td>0.00%</td>
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<tr>
<td><strong>2014 Stock Incentive Plan</strong></td>
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<tr>
<td>Unallocated Option Pool</td>
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<td>500,000</td>
<td>500,000</td>
<td>10.00%</td>
</tr>
<tr>
<td><strong>Totals:</strong></td>
<td>4,500,000</td>
<td>500,000</td>
<td>5,000,000</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
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 – 30 days
Dilution…It’s Inevitable

HBS Technologies, Inc.
Pro Forma Series Seed Capitalization Model

Pro Forma Series Seed Closing

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Common Stock</th>
<th>Options (Common)</th>
<th>Pre-Money Fully Diluted</th>
<th>Pre-Money % Ownership</th>
<th>Post-Money Fully Diluted</th>
<th>Post-Money % Ownership</th>
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<tr>
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<tr>
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<td>1,500,000</td>
<td>30.0%</td>
<td>1,500,000</td>
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<td>30.0%</td>
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<td>21.4%</td>
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<tr>
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<td>500,000</td>
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<td>7.1%</td>
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<td>100.0%</td>
<td>7,000,000</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Input Cells

- Pre-Money Valuation: $2,500,000
- Series Seed Total Investment: $1,000,000

Series Seed Price/Share: $0.500

Pro Forma Post-Series Seed Closing Option Pool Increase to 10% of Fully-Diluted

<table>
<thead>
<tr>
<th>Stockholder</th>
<th>Common Stock</th>
<th>Options (Common)</th>
<th>Series Seed Preferred Stock</th>
<th>Fully-Diluted</th>
<th>% Ownership</th>
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<td>20.77%</td>
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</tr>
<tr>
<td>Rock</td>
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<td>1,500,000</td>
<td>20.77%</td>
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<tr>
<td>2014 Stock Incentive Plan</td>
<td>722,222</td>
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<td>100.00%</td>
<td></td>
</tr>
</tbody>
</table>
Employment Law Considerations

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

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jquillen@foleyhoag.com

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