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STARTUP & ACCELERATE

**Seed Financing and Early Stage Financing for
Startups: Introduction to Angels, SAFEs,
Convertible Notes and Venture Capital**

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Presenters



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Founders' Agreements

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What is a Founders' Agreement?

- Typical Provisions:
 - Governance (e.g., how to elect the Board and who the officers will be; protective provisions)
 - Transferability of Shares (e.g., ROFR in favor of the Company or other founders; tag along rights)
 - Buyouts (e.g., death, disability or termination)
 - Drag Along
 - Market Standoff



Do you need a Founders' Agreement?

Establishes roles and responsibilities

Guidance in certain circumstances (e.g., a founder wants to sell, a founder is no longer able to dedicate the same amount of time to the business)

Protects minority stockholders

Helps stabilize the Company in the event of the departure of a founder



Alternatives to Founders' Agreement

Corporations

- Bylaws
 - For a Right of First Refusal in favor of the Company and Transfer Restrictions
- Restricted Stock Purchase Agreements
 - For Vesting and Market Standoff

Limited Liability Companies

- Operating Agreement



What Happens to the Founders' Agreement upon a VC Financing?

- Founders' Agreement will likely be superseded by:
 - Investors' Rights Agreement
 - Voting Agreement
 - Right of First Refusal and Co-Sale Agreement

- Consider:
 - Amendment Provision
 - Terminates upon a VC Financing



Considerations in Structuring Seed Financings

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Considerations in Structured Seed Financings



**Who are the
Investors and
What are their
Preferences?**



**How Much Capital
is Being Invested?**



**What are the
Costs?**



**What is the
Timing?**



**Any Specific
Considerations?**

Seed Financing Deal Structures

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Common Stock

Series Seed Preferred Stock



Others

Convertible Debt

SAFEs

Common Stock

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Common Stock

What is It?

- Most basic form of equity

What are the Terms?

- Generally, to elect directors, receive any dividends, share in any proceeds upon liquidation
- Generally, no special “investor-style” rights

What are the Advantages?

- Low transaction costs
- From the company’s perspective, investors have very limited economic and control rights

What are the Disadvantages?

- From the investor’s perspective, investors have very limited economic and control rights

When is it Used?

- Founder financings
- Maybe friends and family financings

Series Seed Preferred Stock

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Series Seed Preferred Stock

What is It?

- A “special” form of equity

What are the Disadvantages?

- Higher transaction costs
- Longer time to closing

What are the Terms?

- Liquidation Preference, Dividends, Pre-emptive Rights, Board Representation, Protective Provisions, Information Rights, Access Rights, and More

When is it Used?

- Venture capital financings
- Sophisticated angel financings

What are the Advantages?

- From the investor’s perspective, a negotiated set of specific economic and control rights
- From the company’s perspective, the ability to attract smart money

Convertible Debt

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Convertible Debt

What is It?

- A debt security that may convert into an equity security

What are the Terms?

- Principal Amount, Interest Rate, Maturity Date, Discount, Valuation Cap
- Conversion Features (Qualified Financing, Non-Qualified Financing, Change of Control, Maturity)

What are the Advantages?

- Punts the valuation conversation, if no Valuation Cap
- Low transaction costs
- Shorter time to closing

What are the Disadvantages?

- From the investor's perspective, their stockholder rights are not yet set
- From the company's perspective, the debt could mature and become due and payable

When is it Used?

- Very Often (especially in smaller raises and earlier raises)

SAFEs

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SAFEs

What is It?

- “Simple” Agreement for Future Equity

What are the Terms?

- Similar to a note with no interest or maturity

What are the Advantages?

- Theoretically low transaction costs
- Theoretically shorter time to closing

What are the Disadvantages?

- From the investor’s perspective, an irrevocable commitment of capital with a hope of fair treatment in the future

When is it Used?

- Incubator financings, very early financings, very small financings, West Coast deals

Founder Preferred Stock

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Founder Preferred Stock

What is It?

- A “special” form of common stock

What are the Terms?

- Identical to common stock, except...
- If it is sold in a secondary sale transaction in connection with a preferred stock financing (e.g. Series Seed), it automatically converts into that series of Preferred Stock

What are the Advantages?

- From the company’s perspective, same as common stock
- From the founder’s perspective, it provides the founder with future liquidity

What are the Disadvantages?

- From the company’s perspective, it can reduce the proceeds from a preferred stock financing

When is it Used?

- Founder financings

Rule 506(c) Financings

Rule 506(c) Financings

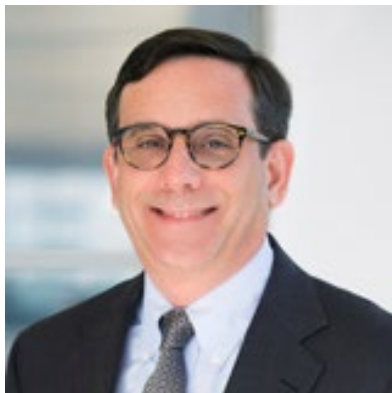
- Type of equity financing that permits general solicitation and advertising...with one catch
- All investors who participate must be “accredited investors” and the issuer must take “reasonable steps to verify” that its investors are “accredited investors”
- The verification process can be handled by the Company or by certain online platforms
- For some early-stage companies, the costs of verifying “accredited investor” status may outweigh the benefits
- Also, “accredited investors” may not be interested in a financing round that involved a general solicitation – they want a referral from someone in their network



Questions?

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Biography



Michael Barron

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Michael K. Barron represents life sciences and technology companies and advises companies, entrepreneurs, and investors in the areas of formation and governance, early and later stage debt and equity financings, mergers and acquisitions, employment and executive compensation, and intellectual property matters, including trademark and technology licensing.

Michael serves on the board and as general counsel to several trade associations that focus on promoting and developing companies and professionals in the life sciences and technology industries. One of these organizations is the Massachusetts Innovation & Technology Exchange (MITX), a trade association, which is now a part of the Greater Boston Chamber of Commerce, serving more than 7,000 New England professionals involved in Internet and digital technologies industry. Michael founded MITX in 1995 to help promote the development and growth of the Internet and digital technologies industry in New England.

Biography



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Andrew Hamilton is a transactional lawyer who focuses his practice on representing clients in venture capital, private equity, and mergers and acquisitions transactions in a wide variety of industries, including technology, life sciences, consumer products, digital health, energy, clean technology, and fintech. Involved in the successful representation of many businesses, Andrew strives to develop a trusted advisor relationship with clients. In this role, an important aspect of his work involves providing advice on strategies and preparation for a sale or exit event, whether anticipated in the short or long term, and Andrew often handles the ultimate sale or exit transaction for clients he has represented for many years.

Biography



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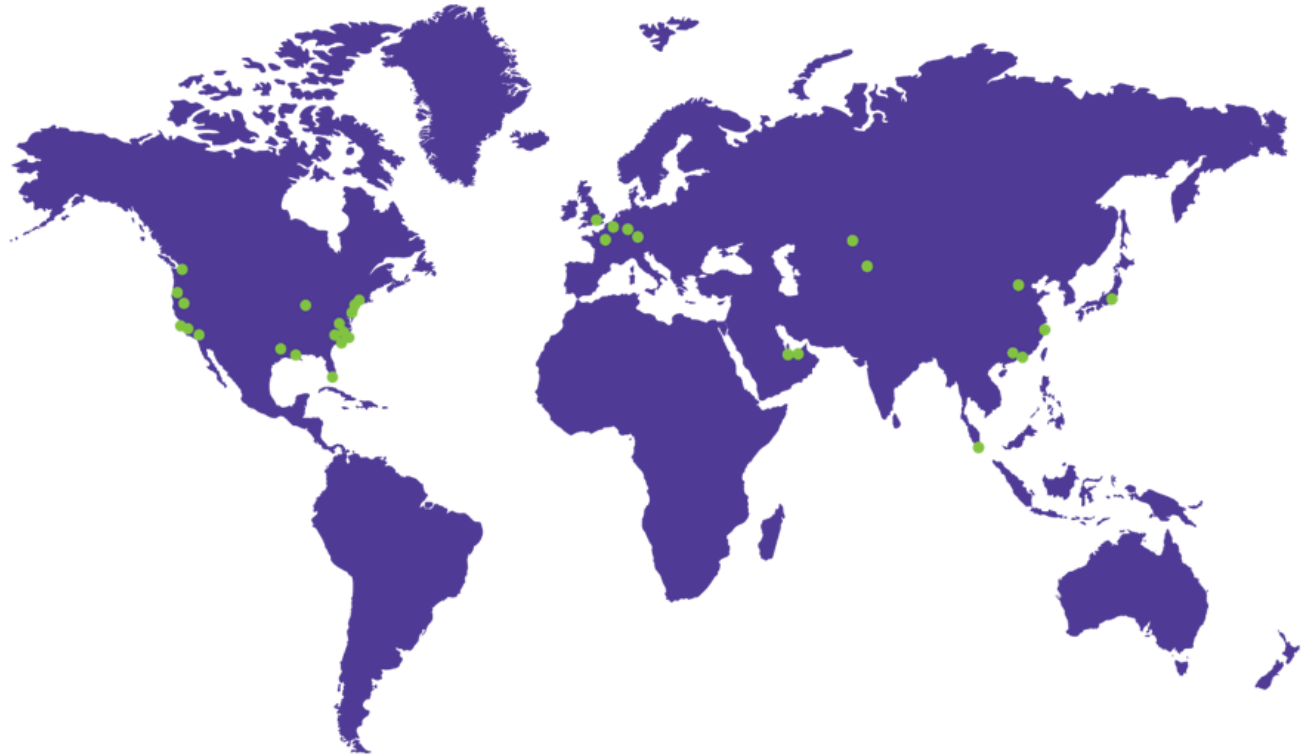
Zachary Zemlin represents public and private companies in a broad range of industries, including biotechnology, medical devices, software, and fintech. Zach has experience counseling clients on mergers and acquisitions, venture capital and other private equity financings, joint ventures, and corporate governance matters. He regularly advises startups through formation and growth strategies, as well as on general corporate and governance matters.

Our Global Reach

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Asia Pacific
Europe
Latin America
Middle East
North America

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