

Founder Agreements

Presentation to Mass Challenge

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Front-End and Back-End Considerations

- **“Front-End” Considerations**
(Front-End being pre-VC Financing)

- **“Back-End” Considerations**
(Back-End being when you close your VC Financing)

Front-End Considerations

- Equity ownership and splits
 - Quantify what each equity owner brings to the table
 - Distinguish between past, present and future contributions
 - Allocate equity amongst founding team
 - Initial allocations
 - Future allocations
- Vesting - absent vesting when issued, stock owned outright
 - Time vs. Milestone Vesting – acceleration of vesting
 - 83(b) elections and other tax considerations (stock issued for contributed property - cash or other)
 - What happens to vested/unvested stock on certain events
 - Founder leaves (for whatever reason)
 - Founder death/disability

Front-End Considerations (cont.)

- Repurchase of vested and unvested shares – vested share repurchase can be difficult – share in future growth of company
 - Purchase price for unvested typically nominal
 - Purchase price for vested typically FMV
- Transfer restrictions – Want to keep stock in the family
 - ROFR
 - Tag Along
 - Drag Along
 - Buy-Sell
 - Permitted Transfers
- Board control and voting of equity
 - Absent contrary agreement – majority rules
 - Guarantees of board seats

Front-End Considerations (cont.)

- IP issues
 - Assignments of IP by founders (no license arrangements)
 - Former employer / university / research facility issues
 - Existing NDAs and IP assignment obligations
- Employment issues
 - Employment agreements vs. offer letters
 - Existing employers and Non-Competes and Non-Solicits

Back End Considerations When the VCs Invest

- Restricted Stock Agreement
 - Previously issued shares become subject to risk of forfeiture
 - Why do VCs require Restricted Stock Agreements?
 - Conditions and Concerns
 - Vesting
 - Credit for Time Served
 - Acceleration Events
 - Sale of Company
 - Death/Disability
 - Termination without cause
 - Leave for good reason

Back End Considerations When the VCs Invest

- 83(b) Elections Required?
 - Revenue Ruling 2007-49 – Post Grant Restrictions
 - Imposition of restrictions causing “substantially vested shares” to become “substantially non-vested shares” is not a “transfer” under Section 83
 - Therefore the imposition of restrictions has no effect for purposes of Section 83 and subsequent vesting does not result in recognition of compensation for the owner.
- Option Plans

Back End Considerations When the VCs Invest

- Right of First Refusal and Co-sale Agreements
 - If Founders (other Key Holders) want to sell shares:
 - Must First Offer to the Company
 - Then Must Offer to the Investors
 - Investors can elect to buy or sell along side the Founder
 - Investors likely will have under-subscription right
 - Periodically Investors will agree to also be subject to ROFR-CS

Back End Considerations When the VCs Invest

- Certain Exceptions
 - Repurchases by Company pursuant to Restricted Stock Agreements
 - Typically transfers to family members or for estate planning purposes
 - Sometimes pledges
 - May be exceptions for sales of small amount of shares
 - IPOs
 - Sale of Company

Back End Considerations When the VCs Invest

- Decision Making
 - Board Structure
 - VCs, Founders, Independent Directors
 - Who designates? For how long?
 - Stockholder and Investor Designee Veto Rights
 - Sale, liquidation of company
 - Changes to Organizational Documents
 - Authorize/issue new securities
 - Share redemptions and repurchases
 - Dividends
 - Loans
 - Officer compensation
 - Entering into Strategic partnerships
 - Formation of subsidiaries
 - Change size of Board
 - Interested Director transactions
 - Change line of business

Back End Considerations When the VCs Invest

- Drag Along
 - What is it?
 - Who is subject to it?
 - What triggers it?



**Richard N. Kimball, Partner
Boston**

+1 617 239 0473

rkimball@eapdlaw.com

Having represented more than 40 venture capital firms and dozens of technology and life sciences companies over the course of his career, Richard knows the ins and outs of private equity and venture capital transactions. He also has extensive M&A and public securities experience, including significant experience representing both issuers and underwriters in Initial Public Offerings. Richard serves as a co-chair of the firm's Technology practice group.

Richard is currently a member of the Boston Bar Association Council and a co-chair of the BBA Business Section, and is a past co-chair of the BBA's Corporate Law Committee. Richard has been named a Massachusetts Super Lawyer for each of the past four years.

Richard is the Co-chair of EAPD HIT - Helping Innovators Thrive. EAPD HIT is designed to help qualifying entrepreneurs and young companies avoid costly mistakes and chart their course to success by providing support and affordable access to strategic legal advice. EAPD has committed up to \$2 million in discounts, deferrals and awards of free legal services per year to this program. For more information about this program please visit www.eapdhit.com.



**Christopher W. Nelson, Partner
Boston**

+1 617 951 2207

cnelson@eapdlaw.com

Chris brings to his clients a broad range of experience in counseling investors, companies and entrepreneurs in a variety of business transactions, including venture capital and private equity investments, mergers and acquisitions, private securities offerings, senior and subordinated debt financings, sophisticated technology transfers and licensing transactions, and equity-based compensation arrangements.

Chris' practice is equally split between guiding venture capital and other private equity funds through their direct investments in prospective portfolio companies and in advising companies (and/or entrepreneurs) that are venture-backed endeavors. Chris' extensive experience with both capital sources and venture-backed companies provides him with a unique perspective on the concerns of each party in these transactions and allows him to anticipate concerns and to structure solutions that work for both sides.

Chris has a wide range of experience in advising start-up companies (and founder teams) from inception through various financing rounds to successful exit.